



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

LAW
KE
132.2
C36
1915

AND
D. L. R.
DIGEST
VOLS. 21-25

CANADIAN
DIGEST
1915



Superiority of Agents & Institutions

CANADIAN ANNUAL DIGEST **1915**

COMPRISING ALL
CANADIAN REPORTED CASES
AND
CANADIAN APPEALS TO THE PRIVY COUNCIL
FOR THE YEAR 1915

INCLUDING THE CASES REPORTED IN
VOLS. 21 TO 25 INCLUSIVE OF
THE DOMINION LAW
REPORTS
(D.L.R.)

ARRANGED ACCORDING TO THE
STANDARD LAW CLASSIFICATION
(See next page for explanatory key)

WITH
TABLES OF CASES DIGESTED, AFFIRMED, REVERSED, ETC.
ALSO
ABBREVIATIONS OF CANADIAN REPORTS, ETC.

STANFORD LIBRARY

TORONTO:
CANADA LAW BOOK COMPANY, LIMITED
84 BAY STREET
1916

CROMARTY LAW BOOK COMPANY
1112 CHESTNUT STREET
PHILADELPHIA

229288

Copyright (Canada) 1916, by R. R. CHOMARTY, TORONTO.

YB47811 08072412

THE SYSTEM OF STANDARD LAW CLASSIFICATION.

This system of law classification was inaugurated in the Canadian Annual Digest, 1912. There are now under this system the Annual Digests of 1912, 1913, 1914 and the present Digest of 1915.

The object of adopting this system of classification is to enable to quickly locate all parallel cases, or cases in point, by means of a permanent number placed at the commencement of each principle decided in any case. This classification number is composed of the numerals of the various sub-headings of each title to which the case relates, and is attached to all cases deciding the same point or principle. It is the distinguishing mark by which a legal principle, or the case deciding it, can be easily found and lifted from the mass of case law.

Taking, for example, the case of *Re False Creek Reclamation Act*, 22 D.L.R. 117, which treats the point as to jurisdiction to remit or set aside an award. That particular principle bears the Classification number ARBITRATION (§ III—17). By turning to this Digest under the title of ARBITRATION there will be found a number of cases classified under the identical number treating the identical question. The same result will be obtained by consulting the previous Annual Digests under that particular heading and number. The views of the various Courts on any given question are thus readily and quickly found.

If a case is reversed, affirmed, followed, distinguished, etc., it is indicated accordingly. The cross-references will prove highly helpful as a guide to the proper titles and as a means of finding analagous principles treated under different branches of the law.

A full table of cases digested, as well as table of cases affirmed, reversed, overruled, varied and distinguished will be found in the volume, also an exhaustive list of "Words and Phrases" judicially considered. A carefully prepared Table of Abbreviations of Canadian Reports, Statutes, Digests and Journals has also been supplemented.

All the annotations contained in the Dominion Law Reports, from Volume 1 to 25 inclusive, have been classified under the respective titles to which they relate. Almost every subject contains references to a number of annotations, thus adding to this Digest an encyclopedic feature.

TABLE OF ABBREVIATIONS

OF CANADIAN LAW REPORTS, JOURNALS, DIGESTS AND STATUTES.

[1913] A.C.	Law Reports, Appeal Cases, of the year indicated in brackets.
Allen	Allen's New Brunswick Reports (same as 6-11 N.B.R.).
A.L.R.	Alberta Law Reports.
A.R. (Ont.)	Ontario Appeal Reports.
Arm. N.S. Dig.	Armstrong's Nova Scotia Digest (1888-1903).
B.C.R.	British Columbia Reports.
Bert. R.	Berton's Reports (same as 2 N.B.R.).
B.N.A.	British North America Act.
C.A.D.	Canadian Annual Digest.
Can. Com. R.	Canada Commercial Reports.
Can. Cr. Cas.	Canadian Criminal Cases.
Can. Cr. Dig.	Canadian Criminal Law Digest (1913).
Can. Dig. (1901-10)	Canadian Ten-Year Digest (1901-1910).
Can. Ex.	Canada Exchequer Court Reports.
Can. Ry. Cas.	Canadian Railway Cases.
Can. Ry. Dig.	Canadian Railway Digest (1914).
Can. S.C.R.	Canada Supreme Court Reports.
Cart.	Cartwright's Cases on the British North America Act, 1867.
Cassels' S.C. Dig.	Cassels' Supreme Court of Canada Digest.
C.C. (Que.)	Civil Code (Quebec).
C.C.L.C.	Civil Code (Lower Canada).
C.C.P.	Code of Civil Procedure (Quebec).
Ch. Cham.	Chancery Chamber Reports (Ontario).
Chip. R.	Chipman's Reports, New Brunswick (same as 1 N.B.R.).
Clarke & Sc.	Clarke & Scully, Drainage Cases.
C.L.Ch.	Common Law Chambers Reports (Ontario).
C.L.J.	Canada Law Journal.
C.L.P. Act	Common Law Procedure Act (Ontario).
C.L.T.	Canadian Law Times.
C.L.T. Occ. N.	Canadian Law Times, Occasional Notes (Ontario).
Cochran's R.	Cochran's Reports (vol. 3 same as 4 N.S.R.).
Con. Ord. N.W.T.	Consolidated Ordinances of North-West Territories, 1898.
Con. Rule (Ont.)	Consolidated Rules of Practice (Ontario).
Cong. N.S. Dig.	Congdon's Nova Scotia Digest (1890).
Coutlée's S.C. Dig.	Coutlée's Supreme Court Digest.
Cr. Code	Criminal Code (Canada).
C.S.A.	Consolidated Statutes of Alberta (1915).
C.S.B.C.	Consolidated Statutes of British Columbia.
C.S.L.C.	Consolidated Statutes of Lower Canada.
C.S.N.B.	Consolidated Statutes of New Brunswick (1903).
Dig. O.C.L.	Digest of Ontario Case Law (1902).
D.L.R.	Dominion Law Reports, commencing with the year 1912.
Dorion	Decisions of the Court of Appeal (Quebec).
Dra.	Draper's Reports (Ontario).
E. & A.	Upper Canada Error and Appeal Reports (Ontario).
E.C. (Ont.)	Election Cases (Ontario).
Gel. & Russ. R.	Geldert & Russell's Nova Scotia Reports (same as 31-45 N.S.R.).
G.O.	General Orders of the Court of Chancery.
Gr.	Grant's Chancery Reports (Ontario).
Han. (N.B.)	Hannay's New Brunswick Reports (same as 12-13 N.B.R.).
H.E.C.	Hodgins' Election Cases (Ontario).
James R.	James' Reports (same as 2 N.S.R.).
Kerr R.	Kerr's Reports (New Brunswick, same as 3-5 N.B.R.).
L.C.G.	Local Courts Gazette (Ont.).
L.C.L.J.	Lower Canada Law Journal.
L.C.J.	Lower Canada Jurist.
L.C.R.	Lower Canada Reports.
Man. L.R.	Manitoba Law Reports.
M.C.R.	Montreal Condensed Reports (1854), 1 vol.

TABLE OF ABBREVIATIONS.

M.L.R., Q.B.	Montreal Law Reports (1885-1891), Queen's Bench, 7 vols.
M.L.R., S.C.	Montreal Law Reports (1885-1891), Superior Court, 7 vols.
N.B. Eq.	New Brunswick Equity Reports.
N.B.R.	New Brunswick Reports.
N.S.R.	Nova Scotia Reports.
N.W.T. Ord.	Ordinances of the North-West Territories (Canada).
N.W.T.R.	North-West Territories Reports.
Oldr. R.	Oldright's Nova Scotia Reports (same as 5-6 N.S.R.).
O.R.	Ontario Reports.
O.S.	Old series of Upper Canada, King's and Queen's Bench Reports (Ontario).
O.W.N.	Ontario Weekly Notes.
O.W.R.	Ontario Weekly Reporter.
Ord. Alta. 1911.	Territories Ordinances (Ordinances of North-West Territories, 1911) in force in Alberta as reprinted 1911.
Pat. & Tay. Man. Dig.	Patterson and Taylor's Manitoba Digest (1875-1911).
P.E.I.R.	Prince Edward Island Reports.
Perrault.	Perrault's Quebec Reports, 1726-1759, 1 vol.
P.R. (Ont.)	Practice Reports (Ontario).
Pugs.	Pugsley's Reports (same as 14-16 N.B.R.).
Pyke.	Pyke's Quebec Reports, 1810, 1 vol.
Q.L.R.	Quebec Law Reports (prior to Quebec Reports).
Que. K.B.	Quebec Reports, King's Bench (continuation of Quebec Queen's Bench Reports).
Que. Q.B.	Quebec Reports, Queen's Bench.
Que. S.C.	Quebec Reports, Superior Court.
Que. P.R.	Quebec Practice Reports.
Ramsey.	Ramsey's Appeal Cases, (Quebec).
R.E.D.	Russell's Equity Decisions (Nova Scotia).
Rep. Gen. de Jur.	Repertoire Général de Jurisprudence Canadienne, by Beauchamp (Quebec, 1770-1913).
Rev. de Crit.	Revue de Critique (Quebec 1871-1875, 3 vols.).
Rev. Leg.	Revue Legale (Quebec).
Rev. de Jur.	Revue de Jurisprudence (Quebec).
Rob. & Jos. Dig.	Robinson and Joseph's Digest (Ontario, 1880).
R.J.Q., K.B.	Reports Judicial Quebec, King's Bench.
R.J.Q., Q.B.	Reports Judicial Quebec, Queen's Bench.
R.J.R.	Mathieu's Revised Judicial Reports (Quebec).
R.S.B.C.	Revised Statutes of British Columbia.
R.S.C. (1906)	Revised Statutes of Canada, 1906.
R.S.M.	Revised Statutes of Manitoba (1902) (1913).
R.S.N.S.	Revised Statutes of Nova Scotia, 1900.
R.S.O.	Revised Statutes of Ontario (1914).
R.S.Q.	Revised Statutes of Quebec, 1909.
R.S.S.	Revised Statutes of Saskatchewan, 1909.
Russ. & Ches.	Russell & Chesley's Reports (same as 10, 11, 12 N.S.R.).
Russ. E.R.	Russell's Election Reports (Nova Scotia).
Russ. & Geld.	Russell and Geldert's Nova Scotia Reports (same as 13-27 N.S.R.).
S.C. Cas.	Supreme Court Cases (Cameron's), 1905.
S.L.R.	Saskatchewan Law Reports.
Stev. N.B. Dig.	Stevens' New Brunswick Digest (1897).
Stew. Adm. R.	Stewart's Admiralty Reports (Nova Scotia).
Stock. Adm.	Stockton's Admiralty Reports.
Stuart's Adm.	Stuart's Vice-Admiralty Reports (Quebec 1836-1874, 2 vols.).
Stuart K.B.	Stuart's King's Bench Reports (Quebec 1810-1835, 1 vol.).
Tay.	Taylor's Upper Canada K.B. Reports, 1823, 1827, 1 vol.
Terr. L.R.	Territories Law Reports.
Thom. R.	Thomson's Reports (same as 1 N.S.R.).
U.C.C.P.	Upper Canada Common Pleas Reports.
U.C.L.J.	Upper Canada Law Journal (prior to Canada Law Journal).
U.C.Q.B.	Upper Canada Queen's Bench Reports.
U.C.R.	Upper Canada Queen's Bench Reports.
Vict. (Ont.)	Statutes of Ontario passed in Queen Victoria's Reign in the year of the Reign prefixed.
W.L.R.	Western Law Reporter.
W.L.T.	Western Law Times.
W.W.R.	Western Weekly Reports.
Wood's R.	Wood's Manitoba Reports (1875-1883, 1 vol., prior to Manitoba Law Reports).
Young's Adm.	Young's Nova Scotia Admiralty Reports, 1865-1880.

INDEX

OF

THE NAMES OF CASES DIGESTED.

Aar-And.]	COLUMN	And-Ave.]	COLUMN
Aaron v. Trudel.....	57	Anderson, Wood v.....	213
Abbott, Re.....	724	Anglo-American Fire Ins. Co. v. Inter-	
Abbott, Loomis v.....	195	national Steel Corp.....	240
Abbott v. Ridgeway Park.....	700	Anglo-American Trust Co. v. Longworth.....	710
Abeles v. The King.....	30, 297	Antiseptic Bedding Co. v. Gurofski.....	354, 361
Abramson v. Colonial Ass. Co.....	393	Antlers Realty Co., Perron v.....	189
Acadia Sugar Refining Co., Donaldson		Appleton, Greene v.....	696
v.....	622	Appleton v. Moore.....	282
Acker, Jollymore v.....	83	Archambault, Decarie v.....	382
Ackersviller v. County of Perth.....	322, 323	Archambault, Poirier v.....	139, 691, 692, 694
Acres, Assiniboia Land Co. v.....	300, 484	Architects, Assoc. of, v. Paradis.....	45, 636
Acres v. Consolidated Investments;		Armitage v. Scrase.....	187
Wyatt v. Same.....	151	Armour v. City of Regina.....	322, 502
Adair, Re.....	235	Armstrong, Re.....	346
Adair v. British Crown, etc., Co.....	162	Armstrong v. Marshall.....	152
Adam v. Richards.....	419	Armstrong v. McIntyre.....	291
Adams v. Hudson Bay Ins. Co.....	365	Arndt, Campbell v.....	28, 31, 589
Adilman, Preston v.....	696	Arnprior v. U.S. Fidelity & Guaranty	
Adkins, Infants, Re.....	316	Co.....	82
Adolph Lumber Co., Walter v.....	352	Aroni v. Wilson.....	246
Ahlberg v. Blair.....	51	Arsenych v. West. Canada Pub. Co.....	240
Aikens, R. v.....	111, 647	Arthur & Town of Meaford, Re.....	373
Aitcheson, R. v.....	59, 496	Asbestos Manuf. Co., Can. Malleable	
Alberta Bottle Co., Revelstoke Saw Mill		Iron Co. v.....	149
Co. v.....	470, 473, 474, 475	Ashcroft, Evans, Johnstone v.....	484
Alberta Drilling Co. v. Dome Oil Co.....	142, 159	Ashdown, Lloyd v.....	311
Alberta Financial Brokers, Sparta State		Aspinall v. Diver & Breen.....	306
Bank v.....	75	Assignment for Creditors, Re.....	413
Alberta Loan & Investment Co. v. Ber-		Assiniboia Club, Gowans Kent v.....	160, 233
cuson.....	407	Assiniboia Land Co. v. Acres.....	300, 484
Alderson v. Watson.....	410	Assiniboia Trust Co., Harwood v.....	54
Aldridge, Re H.....	730	Assurance Fees, Re.....	417
Algoma Steel Corp., Dube v.....	223	Astley, Shepard v.....	25
Allard v. Demers.....	64	Atkinson v. C.P.R. Co.....	287, 518
Allen v. Crowe.....	698	Atkinson, Cinq-Mars v.....	724
Allen, Hull v.....	639	Atkinson v. Pac. Stevedoring & Con-	
Allen, Hyatt v.....	163	tracting Co.....	463
Allen, Moore v.....	62	Attorney-General v. Kelly.....	237, 549, 639
Allen, Richardson v.....	38	Attorney-General for Alta. v. Attorney-	
Allie, Vilandre v.....	170	General of Canada.....	126, 580
"A. L. Smith" and "Chinook," Ontario		Attorney-General of Canada, Attorney-	
Gravel Freighting Co. v.....	7, 120	General for Alta. v.....	126, 580
"A. L. Smith" and "Chinook" v. Ont.		Attorney-General of Canada v. Ritchie	
Gravel Freighting Co.....	6, 8, 623	Contracting Co.....	319
Anctil, Rivet v.....	134, 222	Audet v. Saraguay Electric & Water Co.....	208
Anderdon, Tp. of, Tp. of Colchester		Auer Incandescent Light Manuf. Co.,	
North v.; Same, Tp. of Gosfield		Dougan v.....	460
North v.....	190, 504, 717	Augustine Automatic Rotary Engine v.	
Anderson v. Canada Furniture Manuf.....	683	"Saturday Night".....	21, 422, 553
Anderson, City of Berlin v.....	666	Augustino, Palangio v.....	304
Anderson v. Dawber.....	57	Auld v. Taylor.....	553
Anderson v. Fort William Commercial		Ault & Wiborg Co., Ex parte.....	274
Chambers.....	472, 474	Austria-Hungarian Sick Benefit Soc.,	
Anderson v. Fuller.....	216	Lalonde v.....	146
Anderson, Johnson v.....	330	Auto-Transportation Co., Watson Car-	
Anderson, Larson v.....	194	riage Co. v.....	605
Anderson, St. John & Quebec R. Co. v.....	40	Averill v. Caswell & Co.....	115, 116
Anderson, Springer v.....	632	Avery & Son v. Parks.....	118

Ave-Bar.]	COLUMN	Bar-Bel.]	COLUMN
Avery, Stearns v.	144, 479	Bars of Silver & Can. Salvage Ass'n, Re 251 (No. 2)	8
Aylmer, Town of, Whelan v.	660	Barter, Brocklebank v.	136, 733
B. v. M.	443	Bartleman, Re Franker and	477
Baade, Haug Bros. & Nellerhoe v.	606	Bastedo, Re Clarkson and	697
Babineau v. Railway Centre Park Co.	694	Bastedo v. Young	604
Bacon v. Insurance Co. of North America	356	Bateman v. Nussbaum	186
Bacon v. Providence, Washington, Ins. Co.	356, 551	Bateman v. Scott	305
Badder v. Ontario Cannors, Re	194	Batho v. Invincible Renovator Mfg. Co.	542
Baeder & Co. of C.F., Re	364	Bathurst Land & Develop. Co., Craw- ford v.	530
Baggage Car Traffic Rules, Re	96	Bathurst Lumber Co., Brown v.	473
Baikie v. Latourelle	564	Battell, Peart Bros. Hardware Co. v.	464, 468
Bailey Cobalt Mines, Re	174	Batterman, R. v.	24, 677
Bailey Cobalt Mines, Ltd., v. Benson ..	533	Batram, Findlay v.	427
Bailey, Dubois v.	561	Batrim, Re	54
Baillie, British Pacific Trust Co. v.	50, 555	Baudistel v. Sinton & Leitch	550
Bain v. Cochana	444	Bauman v. Corsbie	706
Baird v. Clark	605	Bayntun, Hoadley v.	403
Baird, Follis v.	684	Beal v. Eastern Trust Co.	727
Baird, Nelson v.	86, 211	Beamish v. Glenn	520
Baker v. McCurdy	405	Beamish v. Lawlor	61, 62, 687
Baldwin v. Chaplin	717	Beamish, McGillivray v.	310
Balfour v. Bell Telephone Co.	455	Beamish, Richardson v.	144
Ball v. Wabash R. Co.	451	Bean Estate, Re	293
Ball & Whieldon, Royal Bank v.	66, 114, 115	Beaton, Cameron v.	254
Ballantyne v. Eansor & Co.	455	Beatty and Brown, Re	697
Ballantyne v. Hettinger	701	Beauchamp, Brunet v.	327
Balment, Rex ex rel. McFarlane v.	253	Beauchemin v. Versailles, etc.	21
Bank of B.N.A. v. Levy	384, 393	Beaudet, Trudeau v.	277, 549
Bank of B.N.A. v. Standard Bank	65, 182	Beaudry, Mailloux v.	542, 600
Bank of Hamilton, Stuart v.	161	Beaulieu, Henry v.	374, 599
Bank of Montreal v. McAlpine	309	Beaulieu, Lachine, J.C., etc., R. Co. v.	219
Bank of Nova Scotia v. Hawkins	334	Beaulieu, R. v.	677
Bank of Nova Scotia, Young v.	403	Beauregard, David v.	71
Bank of Ottawa v. Hall	75	Beausoleil, Dansereau v.	21
Bank of Ottawa v. Shillington	78	Beauthier, Newton v.	28
Bank of Ottawa v. Stamco Ltd. & Bank of B.N.A.	265, 273	Beaver Lumber Co. v. Dolsen	184
Bank of Toronto v. Hall	76	Beck, Hunt v.	718
Bank of Vancouver, MacDonald v.	266	Beck v. The "Kobe"	7
Bankers' Trust and Barnsley, Re	179	Beck Trusts, Re	687, 688
Bankhead Mines, Dutka v.	456	Bédard, Braseau v.	390
Banning, Golightly v.	512	Bédard, Depatie v.	723
Baptiste, Massey-Harris Co. v.	73, 566	Bédard v. Hurtubise	337
Barasch, Wollenberg v.	57	Bédard, Prévost v.	36, 161, 227, 355
Barbeau, Roy v.	145	Begin, Chiniquy v.	21, 222, 272, 421
Barbeau, St. Roch Hotel Co. v.	171, 277	Begin, Kaulbach v.	78
Bardeck, Jackson Water Supply Co. v.	469	Bélanger, Morneau v.	84
Bare v. Bare	154	Belisle v. Belisle	242
Baril, Jarry v.	91	Bell, Carter v.	490
Barisano v. Curtis & Harvey Ltd.	266	Bell v. Hart	286
Barker v. Nesbitt	607	Bell, Hemphill v.	192
Barlow, Can. Bank of Commerce v.	71	Bell, Re Hunt and	27
Barnaby v. O'Donnell	291	Bell v. Smith	539
Barnard v. De Sambor	189, 537	Bell v. Town of Burlington	493, 506
Barnard, Waterloo Manufacturing Co. v.	592	Bell Telephone Co., Balfour v.	455
Barnsley, Re Bankers' Trust and	179	Bell Telephone Co., Desroches v.	666
Barnswell v. National Amusement Co.	16	Bell Telephone Co. v. Duchesne	150
Bar of Quebec, Langstaff v.	440, 625	Bell Telephone Co., Ernesttown Rural Telephone Co. v.	666
Barr v. John Martin Paper Co.	564	Bell Telephone Co., London Railway Commission v.	580
Barr Registers, Re, v. Neal	519	Bell Telephone Co., Stoney Point Village v.	576
Barre v. Verdon	188	Bell Telephone Co., Village of Pierreville v.	506
Barrett v. Phillips	273	Bellamy, Can. Bank of Commerce v.	73, 76, 162
Barry, Stoney Point Canning Co. v.	561	Bellamy v. Robertson	84
Bars of Silver & Can. Salvage Ass'n, Re 251 (No. 1)	25		

Bel-Bl.]	COLUMN	Blo-Bra.]	COLUMN
Beloni St. Onge, Ex parte	109	Bloch v. Moyer	513
Belyea, R. v.	28, 46, 47	Blohm v. Hayes; Hayes v. Blohm	140
Bending v. Fitzgerald	709	Blomfield v. Rural Mun. of Starland	218, 260, 496
Beneroff, Burlak v.	118	Blouin, Dupuis v.	652
Bengert v. C.N.R. Co.	639	Blue v. Miller	433, 620
Benjamin v. Marsan	490	Boal, Trusts & Guarantee Co. v.	233
Bennett, McNeilly v.	192	Board of Investigation, Morens v.	718, 719
Bennett v. Pearce	538	Board of School Trustees, Ramsay v.	148
Bennett v. Stodgell	212	Board of Valuers, St. John v.	656, 660
Benoit v. Vendetti	188	Boehm & Co., Home v.	163
Benson, Bailey Cobalt Mines, Ltd., v.	533	Boggs, Montreal Trust Co. v.	483, 484
Beranek, Re	317	Boileau, Finlay v.	333, 548
Berard v. Bruneau	12, 265, 464	Bois v. Deschêne	423
Berberick, Cleland v.	5	Boisvert, Collector of Revenue v.	379, 637
Bercuson, Alta. Loan & Investment Co. v.	407	Boivin v. Chicoutimi Water & Electric Co.	10, 83
Berge v. Mackenzie, Mann & Co.	430	Boland v. G.T.R. Co.	579
Bergeron v. Dagenais	528	Boland v. Skead	332
Bergeron, Pharmaceutique Ass'n of Que. v.	245	Boll v. Montgomery	683
Bergh v. Frost	302, 703	Bolton v. Tyndall	562
Bergklint v. Western Canada Power Co.	448	Bonanza Creek Gold Mining Co. v. The King	158
Bergman, Manning v.	500	Bonenfant, Vanier v.	409
Berlin, City of, v. Anderson	666	Bonhomme v. Montreal W. & P. Co.	206, 571
Berlin, City of, v. County Judge of Waterloo	494	Bonneau v. Sevigny	457
Berliner Gramophone Co. v. Pollock	37	Bonstelle, Creasor v.	739
Berman v. Kocurka	341	Book, R. v.	318, 650
Bernard, James Bay & E.R. Co. v.	285, 395, 555, 738	Booth v. The King	669
Bernstock, Kendler v.	475	Booth, Lowery & Goring v.	718
Bertram v. Builders' Assoc. of North Winnipeg	511	Booth, Walker v.	231
Bertrand, Manion v.	147, 275	Borbridge v. Borland	412
Berube, City of Fraserville v.	579	Borden, The King v.; Ex parte Kinnie	58, 107, 188
Beseloff v. White Rock Resort Dev. Co.	470	Borden v. Stanford	169, 686
Beswetherick v. Griesman	489	Borland, Borbridge v.	412
Bethune v. Biggar	683	Borror, R. v.	425
Bibeau v. Leclerc	611	Borror's Conviction, Re	425
Bible v. Croasdale	594	Boston Shoe Co. v. Frank	164, 176
Bice v. Harness	154	Boston Shoe Co., Frank v.	176
Bienvenue v. Stafford	187	Bouchard, Bigoness v.	407
Biggar, Bethune v.	683	Boulevard Heights, Veilleux v.	26, 700
Bigoness v. Bouchard	407	Bourassa v. City of Salaberry	249
Big Valley Collieries v. MacKinnon	477	Bousquet v. Mignault	90
Bilodeau v. Chartrand	333	Boutin v. Doyle	5
Bilodeau, Duclos v.	167	Boving & Co., Crowley v.	492
Bilton, Re	721, 728	Bowers v. Bowers	431
Binet, St. Lawrence Furniture Co. v.	165	Bowers v. Bowlen	486
Birch v. Stephenson; McDougall v. Stephenson	92	Bowlen, Bowers v.	486
Birchall v. Decary	251, 253	Bow Valley, Munic. of, v. McLean	654, 657
Bissonnette, Charland v.	701	Boyce, Rex ex rel., v. Ellis	19
Bitulithic & Contracting Co. v. Canadian Mineral Rubber Co.	541	Boyd, Cotton v.	418
Black v. City of Calgary	644	Boyd v. Dean	739
Blackburn, By-Town & Aylmer Union Co. v.	670	Boydell v. Haines	690, 699, 710
Black Diamond Oil Fields v. Carpenter, Dist. Ct. J.	159	Boyer, Dupont v.	535
Black Diamond Oil Fields, International Supply Co. v.	309	Bradburn, Evans v.	47
Black Diamond Oil Fields, Wolverton v.	169	Braden, Brandon v.	588
Black v. Dominion Fireproofing Co.	248, 390	Braden, Fort William Commercial Chambers v.	167
Black v. Hohlstens	310	Braden v. Varlow Foundries, Ltd.	142
Black, Williams v.	274, 621, 633, 707	Bradish v. City of London	324
Black's Case; Re Great Northern Ass. Co.	171	Bradshaw v. Grossman	554, 556
Blair, Ahlberg v.	51	Brampton Milling Co. v. C.P.R. Co.	106
		Brandon v. Braden	588
		Brandon, Richman v.	535
		Brandon, Toronto Brick Co. v.	76
		Brandon, Young v.	532
		Brandram-Henderson, O'Toole v.	458
		Branson v. Goodwin; Olsen v. Goodwin	433

Bra-Bru.]	COLUMN	Bru-Cal.]	COLUMN
Brassard, G.T.R. Co. v.	96, 681	Brunet v. Caron.....	89, 559
Brasserie Champlain v. St. Roch Hotel.	602	Brunet, Laporte v.	333
Brauchle v. Lloyd.....	152, 703	Brunet, Noel v.	144
Brault, St. Maurice Sand Co. v.	50	Brunet v. Painchaud.....	60
Bravender, Meindl v.	711	Brunswick Balke Collender Co. v. Falsetto.....	212
Brazeau v. Bedard.....	390	Brymer v. Thompson.....	135, 212, 403
Breakwater Co., Re.....	181	Bryson, The King v.	108
Breitman, Perreault v.	628	Buchan, Miller v.	489
Brennan, O'Brien v.	15	Bucke, Irving & Morris v.	392
Brennen & Sons, Ridge v.	247	Buckner, Mitchell v.	118
Brennen & Sons v. Thompson. 21, 249,	389	Buff Pressed Brick Co. v. Ford.....	166
Brenton, Slowman v.	600	Builders' Assoc. of North Winnipeg, Bertram v.	511
Bridgewater, Town of, James v.	505	Builders' Supply Co. v. Huddleston.....	465
British American Paint Co. v. Fogh.....	599, 604, 609	Buist, Milk Farm Products and Supply Co. v.	702
B.C. Central Farmers Institutes v. C.P.R. Co.	101	Bullen, McMurtry v.	287
B.C. Electric R. Co., Green v.	643	Bunn, Ontario Wind Engine v.	209, 560
B.C. Electric R. Co. v. Loach.....	514, 644	Burgess, Jones v.	515, 688
B.C. Electric R. Co., Mackenzie v.	36, 518, 682	Burgess, R. v.	205
B.C. Electric R. Co., McCrimmon v.	350, 428, 717	Burlak v. Beneroff.....	118
B.C. Electric R. Co., Union Assurance Co. v.	48, 427	Burlie, Douglas v.	695
B.C. Express Co. v. Inland Express Co.	98	Burlington, Town of, Bell v.	493, 506
B.C. Iron Wire & Fence Co., Stewart Iron Works Co. v.	231	Burm v. The King.....	246
B.C. Portland Cement Co., Re.....	82, 172	Burmeister, Pulford v.	33
B.C. Refining Co., Wilson v.	169	Burnaby, Robinson v.	148
British Crown, etc., Co., Adair v.	162	Burns v. Hills.....	442
British and Foreign Bible Society v. Chaption.....	722	Burnsland Addition, Kaye v.	232
British Pacific Trust Co. v. Baillie.....	50, 555	Burroughs v. Paradis.....	24
Britsch v. Piper.....	588	Burrows v. G.T.R. Co.	185, 278, 429, 580
Brocklebank v. Barter.....	136, 733	Burt v. Dominion Steel & Iron Co.	262
Brocklebank, Foster v.	471, 473	Bury, Merchants Bank v.	70
Brodeur v. Elliott.....	49	Business Brokers v. Diner.....	88
Brodeur Co., Graham v.	78, 554	Buteau v. Hamel.....	337
Brookler v. Security National Ins. Co.	309	Butler v. Dunlop.....	600
Brooks v. Fletcher.....	277	Butler, Johnson v.	465, 472
Brotherhood of Railway Trainmen & Moore, Re.....	364	Butler, Mechanical Equipment Co. v.	150, 151
Broughton, Brown v.	414, 416	Butler, North Wyoming v.	181
Brown v. Bathurst Lumber Co.	473	Buxton v. Lowes.....	445, 446
Brown, Re Beatty and.....	697	Byrick v. Catholic Order of Foresters.....	360
Brown v. Broughton.....	414, 416	Byrne, Charleson v.	439, 440, 659
Brown v. Coleman Development Co.	134	Bythell, R. v.	123
Brown v. Coughlin.....	177	By-Town & Aylmer Union Co. v. Blackburn.....	670
Brown, Lamphier v.	721	Cabana, Coderre v.	543
Brown, Matheson v.	422	Cabana, Fontaine v.	462, 627
Brown v. McLeod.....	612	Cada, Re Osterhout and.....	483
Brown, Newberry v.	136, 277	Cadrin v. Gauvreau.....	557
Brown v. North American Lumber Co.	737	Cairns, Warren v.	487
Brown, Palfrey v.	472	Calbert, Stewart v.	313
Brown v. Que. & L. St. John R. Co.	105	Caldarelli v. O'Brien.....	446
Brown, Richards and, v. Leonoff. 114, 303,	304	Calgary Brewing & Malting Co., Re.....	410
Brown, Ritchie Contracting Co. v.	18, 117	Calgary, City of, Black v.	644
Brown, Walker v.	588	Calgary, City of, v. C.N.R. Co.	581
Browne v. Major Manuf. Co.	89	Calgary, City of, v. Can. West. Natural Gas Co.	501
Browne v. Timmins.....	477	Calgary, City, Lusk v.; Same, Wheatley v.	324
Browning v. The Masson Co.	137, 209	Calgary, City of, Pearce v.	19, 658, 659, 664
Browns Ltd., Milo Candy Co. v.	140	Calgary & Edmonton R. Co., Sask. Land & Homestead Co. v.	256, 259
Bruce v. Nova Scotia Fire Ins. Co.	186	Calgary Furniture Store, Re.....	411
Brulotte v. Brulotte.....	235	Calgary Water Power Co., Riverside Lumber Co. v.	718
Bruneau, Berard v.	12, 265, 464	Calhoun v. Maryland Casualty.....	81
Bruneau v. Paquette.....	290	Calogery v. Spencer.....	297, 436
Bruner, Shepard v.	277, 347, 685		
Brunet v. Beauchamp.....	327		

Cam-Can.]	COLUMN
Cameron v. Beaton.....	254
Cameron, Ledoux v.....	480
Cameron v. Royal Bank.....	64
Campbell v. Arndt.....	28, 31, 589
Campbell, Chalmers v.....	87
Campbell v. Douglas.....	276, 484, 693
Campbell, Irwin v.....	41, 407
Campbell v. Masur.....	488
Campbell, McDonald v.....	517
Campbell v. McMillan.....	217
Campbell v. Nova Scotia Steel & Coal Co., Ltd.....	584
Campbell, Robinson v.....	327
Campbell v. Roubert.....	479
Campbellford L.O. & W.R. Co. and Buckley, Re.....	259
Campbellford, Lake Ontario, etc., R. Co. v. Massie.....	40
Canada Cement Co., Fitzgerald v.....	246
Canada Cement Construction Co., Royal Paper Box Co. v.....	175
Canada Foundry Co. v. Edmonton Portland Cement Co.....	210, 222
Canada Furniture Manuf., Anderson v.....	683
Canada Glass Mantels & Tiles Ltd. v. Shepard.....	386
Canada Investment v. Corp. of Scotstown	602
Canada Life v. Cole.....	488
Canada Life Ass. Co., Treas. of Ontario v.....	127
Canada Permanent Mortgage Corp., Re.	480
Canada Sand Lime Co. v. Orr Brothers.	607
Canada Steamship Lines v. Steel Co.....	554
Canada Steel & Wire Co. v. Ferguson.	61, 426
Canadian Bank of Commerce v. Barlow.	71
Canadian Bank of Commerce v. Bellamy.....	73, 76, 162
Canadian Bank of Commerce v. Harvey.	556
Canadian Bank of Commerce v. Indian River Gravel Co.....	386
Canadian Bank of Commerce v. McLeod	67
Canadian Bank of Commerce, Nicoll v.....	420
Canadian Bank of Commerce v. Perkins.	553
Canadian Bank of Commerce, Pioneer Bank v.....	66
Canadian Bank of Commerce v. Waldner	64
Canadian Bartlett Automobile Co., Kohlmeyer v.....	541
Canadian Bridge Co., Creveling v.....	32, 682
Canadian China Clay Co. v. G.T., C.P. & C.N.R. Cos.....	103
Canadian Collieries, Cook v.....	581
Canadian Collieries, Stanoszek v.....	517
Canadian Credit Men's Ass'n, Sask. Elevator Co. v.....	52
Canadian Equip. & Supply Co. v. Christie.....	405
Canadian Expansion Bolt Co., Ogden Ltd. v.....	284, 672
Canadian Fairbanks Morse v. U.S. Fidelity.....	81
Canadian Financiers, Stewart v.....	704
Canadian General Electric v. Canadian Rubber.....	214
Canadian General Electric Co. v. Dodds	386
Canadian Heating & Ventilating Co. v. Cutts.....	427
Canadian Imperial Trust Co., Shipman v.....	480

Can-Can.]	COLUMN
Canadian Iron Corp., Nepisiquit Real Estate, etc., Co. v.....	350, 476, 718
Canadian Land Investment Co. v. Phillips.....	192
Canadian Light & Power Co., Fortier v.....	217
Canadian Light & Power Co., Reynolds v.....	456
Canadian Malleable Iron Co. v. Asbestos Manuf. Co.....	149
Canadian Mineral Rubber Co., Bitulithic & Contracting Co. v.....	541
Can. Northern Express Co. v. Rosthern; Can. North. Telegraph v. Rosthern.....	660, 663, 664
Canadian Northern Ont. R. Co. v. Perrault.....	219
Canadian Northern Ont. R. Co., Picton Board of Trade v.....	96
Canadian Northern Ont. R. Co. v. Smith.	45
Canadian Northern Pacific R. Co. & Finch, Re.....	44
Canadian Northern Pacific R. Co. & New Westminster, Re.....	656
Canadian Northern Quebec R. Co., Gignac v.....	18, 387
Canadian Northern Quebec R. Co. v. Montreal.....	578
Canadian Northern R. Co., Bengert v.....	639
Canadian Northern R. Co., City of Calgary v.....	581
Canadian Northern R. Co. v. City of Winnipeg.....	660
Canadian Northern R. Co., Clavir v.....	218
Canadian Northern R. Co., Dutton v.....	267, 582, 583, 670, 684, 713
Canadian Northern R. Co., Early v.....	582
Canadian Northern R. Co., Green v.....	45, 184, 260, 262
Canadian Northern R. Co., Holmested v.....	37, 349
Canadian Northern R. Co., Houghton v.....	398
Canadian Northern R. Co. v. North Bay	260, 575
Canadian Northern R. Co., Peszenicny v.....	430
Canadian Northern R. Co. v. Peterson.	712
Canadian Northern R. Co., Randall, Gee & Mitchell v.....	97, 265
Canadian Northern R. Co., Underhill v.....	577
Canadian Northern Western R. Co. v. Moore.....	32, 33, 41, 44, 220, 273, 278
Canadian Ohio Motor Car Co. v. Cochrane.....	171
Canadian Order of Foresters, Linke v.....	363, 366
Canadian Pacific & E. & N.R. Cos., Oliver-Serim Lumber Co. v.....	102, 575
Canadian Pacific R. Co., Atkinson v.....	287, 518
Canadian Pacific R. Co., Brampton Milling Co. v.....	106
Canadian Pacific R. Co., B.C. Central Farmers Institutes v.....	101
Canadian Pacific R. Co. v. Continental Oil Co.....	267
Canadian Pacific R. Co., Cowichan Ratepayers Ass'n v.....	105
Canadian Pacific R. Co., Dechêne v.....	100, 214, 271, 283

Can-Car.]	COLUMN	Car-Che.]	COLUMN
Canadian Pacific R. Co., Delap v.	550	Caron, Villemaire v.	227
Canadian Pacific R. Co., Demers v.	452	Carpenter, Dist. Ct. J., Black Diamond Oil Fields v.	159
Canadian Pacific R. Co., De Soles v.	582	Carriage Harness v. Grenier.	290
Canadian Pacific R. Co., Drury v.	100	Carriege, Manning v.	133
Canadian Pacific R. Co., Fernie-Fort Steele Brewing Co. v.	100	Carritt, Diehl v.; Re Imperial Paper Mills.	177, 179
Canadian Pacific R. Co. v. Flore.	456, 458	Carruthers v. Schmidt.	134
Canadian Pacific R. Co., Fort William Board of Trade v.	104	Carson v. Montreal Trust Co.	175
Canadian Pacific R. Co. v. Frechette	447, 452, 453, 513	Carter v. Bell.	490
Canadian Pacific R. Co., Fredericton Board of Trade v.	101, 104	Carter v. Hicks.	38
Canadian Pacific R. Co., Greer v.	428, 583	Carter-Halls Aldinger Co., Hill v.	454
Canadian Pacific R. Co., Jackson v.	216, 278, 683	Carver, Wickwire v.	70
Canadian Pacific R. Co., Johansdotter v.	14	Casavant v. Ciccin.	333
Canadian Pacific R. Co., Kelly v.	74	Casci and Toronto, Re.	219
Canadian Pacific R. Co., Levack v.	455	Caswell & Co., Averill v.	115, 116
Canadian Pacific R. Co., Massiah v.	95	Caswell, Consolidated Investments v.	180
Canadian Pacific R. Co. v. McDonald.	456	Cathcart, Re.	725
Canadian Pacific R. Co., Mountain Lum- ber Manuf. Ass'n v.	102	Catholic Order of Foresters, Byrick v.	360
Canadian Pacific R. Co., Ozias v.	106	Cauchon, Lachance v.	349, 352
Canadian Pacific R. Co. v. Parent	99, 122, 223, 224	Cavanagh, T. D., Ltd., White v.	376
Canadian Pacific R. Co., Port Arthur & Fort William Boards of Trade v.	105	Caveat on Mechanics' Lien, Re.	414
Canadian Pacific R. Co., R. v.	497	Cayuga, Johnston v.	194
Canadian Pacific R. Co., Richardson v.	97	Cedars Rapids Mfg. & Power Co. v. Lacoste.	44, 636
Canadian Pacific R. Co., Roberts v.	104	Cement Products Co., Forget v.	85, 168
Canadian Pacific R. Co., Sharpe v.	451	Central Canada Loan, Re.	489
Canadian Pacific R. Co., Strong v.	8	Central Trust and Safe Deposit Co. v. Snider.	631, 685
Canadian Pacific R. Co., Sudbury Brew- ing & Malting Co. v.	100	Chaleur Bay Mills, Shives Lumber Co. v.	433, 533
Canadian Pacific R. Co., Two Creek Grain Growers' Ass'n v.	104	Challoner, Re.	723
Canadian Pacific R. Co., Village of Mont Laurier v.	321	Chalmers v. Campbell.	87
Canadian Pacific R. Co. v. Walsh.	33	Chalmers v. City of Toronto.	552
Canadian Pacific R. Co., Windebank v.	39	Chambers v. Le Burtis.	490
Canadian Pacific R. Co., Winnipeg v.	322, 576	Chambly Basin, Montreal L., H. & P. Co. v.	388, 655
Canadian Pacific R. Co., Wood v.	95	Champigny v. Mutual Ins. Co.	364
Canadian Pacific R. Co. & West. Canada Power Co., Stoltz Manuf. Co. v.	102	Champion v. World Building.	25, 197
Canadian Passenger Assoc'n, Roy v.	105	Channel v. People's Home Co.	418
Canadian Pressed Brick Co. v. Cole.	305	Chantal, Parish of, Daoust v.	329
Canadian Rubber, Can. General Electric v.	214	Chapin, Hyde v.	483
Canadian West. Natural Gas Co., City of Calgary v.	501	Chapin, Lee v.	606, 610
Canadian West. Natural Gas etc. Co., Raffan v.	311	Chapin v. Matthews.	213, 214, 608, 637
Canestrari v. Lecavalier.	136, 143	Chapleau, Tp. of, Crichton v.	350
Cantin, Suttles v.	521	Chaplin, Baldwin v.	717
Cape Breton Electric Co., Dunham v.	642	Chaplin v. Chaplin.	288
Cape, Martin v.	192	Chaplin, Volcanic Oil & Gas Co. v.	190
Cape, Wall v.	453	Chapman v. Purtell.	480
Capital Life Ass. Co., Parker v.	362	Chapman, Wheeler v.	528
Capital Life Ass. Co. v. Parker.	362	Chapton, British & Foreign Bible Soc. v.	722
Carbray v. Strathcona Fire Ins. Co.	361	Chaput v. Village of Ste. Denis.	424
Card, Walker v.	368	Charland v. Bissonnette.	701
Carey, Herrington v.	78	Charles Austin Co., Garment v.	462
Cariboo Trading Co., Dumphy v.	90	Charleson v. Byrne.	439, 440, 659
Carleton v. Rur. Mun. of Sherwood.	325	Charpentier v. Hebert.	254, 492
Carlin, Johnston v.	170	Charpentier, Langlois v.	48, 140, 696
Carman, Lecky v.	147	Charron, Laurentides Brique et Sable Co. v.	22, 389
Carmangay v. Snyder.	690	Chars Urbains v. Commissaires du Havre	83, 84, 159, 226, 319
Caron, Brunet v.	89, 559	Chartrand, Bilodeau v.	333
		Chatham Bridge Co., Donovan v.	149
		Chatham Glebe Trust, Re.	113
		Chenery, Messier v.	562
		Cherrington v. Cherrington.	242
		Chevalier v. Girard.	546
		Chevalier v. Tompkins.	146

Che-Col.]	COLUMN	Col-Cou.]	COLUMN
Chevandier, Montreal Street R. Co. v.	95, 225	Collector of Revenue v. Boisvert...	379, 637
Chicoutimi Pulp Co., Price v.	421, 422	Collector of Revenue v. Paquet.....	636
Chicoutimi Pulp & Wood Co., Union Trust Co. v.	138	Collector of Revenue v. Plourde.....	378
Chicoutimi, Town of, Guardian Ass. Co. v.	365	College Ste. Marie, Town of Maison-neuve v.	506, 657
Chicoutimi Water & Electric Co., Boivin v.	10, 83	Collin v. G.T.R. Co.	569, 581
Childs v. King.....	406	Collins v. Dominion Bank.....	64
Chiniquy v. Begin.....	21, 222, 272, 421	Collison v. Kokatt.....	23
Chisholm v. Chisholm.....	632	Colonial Ass. Co., Abramson v.....	393
Choinière, Ménard v.....	31, 389	Colonial Ass. Co., Maple Leaf Milling Co. v.	362
Christenson, Re.....	272	Colonial Investment & Loan Co. v. Grady.....	125, 482, 486
Christie, Can. Equip. & Supply Co., v.	405	Coltman, Fussell v.....	393
Christie, Halifax Power Co., v.	248, 280	Colton, R. v.....	375
Christie v. London Electric Co.	446, 448, 454	Columbia Bitulithic Co. v. Vancouver Lumber Co.	161
Church, Hamilton v.....	122, 242	Columbia Coast Mission, Thompson v.	188
Churchill v. McRae.....	387, 388, 699	Colville Ranching Co., McFadden v....	390
Ciccin, Casavant v.....	333	Comeau, The King v.....	669
Cimonian, Re.....	13	Commissaires du Havre, Chars Urbains v.	83, 84, 159, 226, 319
Cinq-Mars v. Atkinson.....	724	Commonwealth Trust Co., Fordham v....	402
City of (Indexed under name).		Commonwealth Trust Co., Varley v....	629
Clairmont, Lamarre v.....	88	Concrete Appliances Co. v. Rourke.....	541
Clancy, Re Land Registry Act.....	590	Confederation Life, Zarr v.....	410
Clapp, Wallace v.....	117	Confer, Gallagher v.....	137, 445
Clark, Baird v.....	605	Connors v. Myatt.....	11
Clark v. Hepworth.....	705	Consolidated Investments, Acres v.; Same, Wyatt v.....	151
Clark, McNulty v.....	433	Consolidated Investments v. Caswell..	180
Clark v. St. Croix Paper Co.....	31	Consolidated Land, etc., Co., Grayson v.	551
Clark v. Treloar.....	549	Consolidated Mining & Smelting Co., Erdman v.	511
Clarke, Re.....	364	Constable v. Russell.....	683
Clarke v. Clarke.....	228	Consumers Gas Co., King v.....	327
Clarke, Crown Life Ins. Co. v.....	395, 566	Continental Life Ins. Co., Rudolph v....	364
Clarke, East v.....	9, 10, 403	Continental Oil Co., Can. Pac. R. Co. v.	267
Clarke v. Latham.....	561	Conway v. Dennis Canadian Co.....	583
Clarke v. Robinet.....	239	Cook v. Canadian Collieries.....	581
Clarkson and Bastedo, Re.....	697	Cook v. Cook.....	572
Clarkson, Kreamer v.....	178	Cook v. Deeks.....	164
Clary v. Mond Nickel Co.....	233	Cook v. Foreman.....	546
Clavir v. C.N.R. Co.....	218	Cook, Magrath v.....	71
Cleland v. Berberick.....	5	Cooper, Duncan v.....	37
Clement v. Déval.....	394	Cooper v. Holden Co.....	407
Clergue, Vivian v.....	710	Cooper v. Parsons Realty Co.....	562
Clermont, Peloquin v.....	387, 620	Cooper v. Taylor.....	289, 291
Clouthier, First State Bank v.....	74	Corbett, Sparrow v.....	73
Cloutier v. Loisselle.....	416	Corby v. Perkus.....	475
Clowes, Crawford v.....	675	Cordingley v. Williamson.....	194
Clowes v. Edmonton School Board.....	614	Cordova Mines, Hughes v.....	490
Cluthe, Spectar v.....	596	Coristine Limited v. Haddad.....	232
Coady, R. v.....	399	Cormier v. Vaillant.....	321, 328
Coaticook, Town of, v. Laroche.	32, 326, 514	Cornwall, Tp. of, Re Ottawa & New York R. Co. and.....	660, 716
Cochana, Bain v.....	444	Corsbie, Bauman v.....	706
Cochlin v. Massey-Harris Co.....	516	Coté, Darragh v.....	5, 217
Cochrane, Can. Ohio Motor Car Co. v.	171	Coté v. Dufresne.....	71
Coderre v. Cabana.....	543	Coté, Réaume v.....	10
Coffin v. Gillies.....	605	Cotter, Re.....	727, 729
Cohen v. Edelstone.....	31, 619	Cottier, Poizner v.....	215
Cohen, R. v.....	297	Cottingham, Longman v.....	513
Colas, Giguère v.....	163, 168, 701	Cotton v. Boyd.....	418
Colchester North, Tp. of, v. Tp. of Anderton; Tp. of Gosfield North v. Same.....	190, 504, 717	Coughlin, Brown v.....	177
Cole, Canada Life v.....	488	Counter, Re.....	363
Cole, Can. Pressed Brick Co. v.....	305	Countryman, Magrath-Holgate v.....	226, 634
Cole v. Cole.....	55		
Cole v. Read.....	145, 626		
Coleman v. City of Halifax.....	324		
Coleman Development Co., Brown v....	134		

Cou-Cur.]	COLUMN	Cur-Del.]	COLUMN
County Judge of Waterloo, City of Berlin v.	494	Curry, Twiss v.	48
Courchene v. Viger Park Co.	162, 166, 172	Curtis, Re.	726
Courtemanche v. Girouard.	183	Curtis & Harvey Ltd., Barisino v.	266
Courtenay, City of, E. & N.R. Co. v.	494	Curtis v. Skeffington.	289
Courtney, Town of, v. Esquimalt & Nanaimo R. Co.	576	Cushing v. Horner.	385
Cousineau, Paul v.	405	Cusson Bros. v. King.	142
Couture, Doyle v.	228, 593	Cust, Re.	664
Coveney v. Glendenning.	164	Cut-rate Plate Glass Co. v. Solodinski.	466, 467
Cowan v. Schilling; Rex v. Schilling.	111, 229, 650, 651	Cutts, Can. Heating & Ventilating Co.	427
Cowan v. The St. Alice.	617	Cyr v. Lecours.	89, 149, 153, 559
Cowichan Ratepayers Ass'n v. C.P.R. Co.	105	Cyr v. Town of Fort Frances.	214
Cragge v. Keane.	27	Dagenais, Bergeron v.	528
Craig v. Pegg.	710	Dagenais, Lecours v.	90
Crane v. Hoffman.	602	Dale v. Toronto R. Co.	515, 677
Crane, Wade v.	138	Dalke, R. v.	330
Crane, William Shannon Co. v.	349	Dampousse v. Valiquette.	210
Crawford v. Bathurst Land & Development Co.	530	Dana & Fullerton v. Vancouver Breweries.	404
Crawford v. Clowes.	675	Dandy v. National Trust Co.	292
Crawford v. Truax.	254	Dangler v. Hollinger Gold Mines.	14
Creasor v. Bonstelle.	739	Daniels, Roberts v.	185
Creditors, Re Assignment of.	413	Danis v. Hudson Bay Mines.	449, 453
Creditors' Relief Act, Re.	288	Dansereau v. Beausoleil.	21
Creveling v. Canadian Bridge Co.	32, 682	Dansereau, Kearney v.	513
Crichton's Limited v. Green.	408	Daoust, La Sauvegarde v.	356
Crichton v. Tp. of Chapleau.	350	Daoust v. Parish of Chantal.	329
Croasdale, Bible v.	594	Darling, Re Finlay and.	723
Crocker v. Galusha.	141	Darragh v. Coté.	5, 217
Crocker v. Storey.	437	Dart v. Drury.	536, 687
Croft, R. v.; R. v. Holowaskawe.	644	Date, Gusetu v.	317
Cromwell v. Morris.	153	David v. Beauregard.	71
Cromwell v. Rioux.	519	David, Mayer v.	406
Crooks v. Cullen.	77	Davidovitch v. Swartz.	34, 638
Crossman v. Mosely.	58	Davidson, Re.	339
Crossman v. Purvis.	185	Davidson v. Forsythe.	306
Crowe, Allen v.	698	Davidson v. King.	406
Crowe, Montreal Tramways Co. v.	396	Davidson, London Scottish Can. Inv. Syndicate.	738
Crowley v. Boving & Co.	492	Davies, Re.	318
Crown Bakery, Western Canada Flour Mills Co. v.	601	Davies v. Davies.	122
Crown Life Ins. Co. v. Clarke.	395, 566	Davies, Haight v.	479
Crown Lumber Co. v. Malcolm.	472, 738	Davies, MacDonell v.	40
Crow's Nest Pass Coal Co., Powell v.	459, 463	Davis Acetylene Gas Co. v. Morrison.	21, 196, 554, 556
Crozier v. Trevarton.	408	Davis v. Feinstein.	110, 267, 389
Crystal Ice Co., Peirson v.	273	Davis, R. v.	61
Culbert, Re.	723	Davis, Singer v.	310
Cullen, Crooks v.	77	Davison v. Forbes.	686
Cullen, Hazell v.	303	Dawber, Anderson v.	57
Cumberland Board of Trade v. Esquimalt & Nanaimo R. Co.	101	Daykin & Jackson, Hammond v.	188, 213
Cummings, Livingston v.	564	Deal, Moore v.	638
Cummings, Patillo v.	595	Dean, Boyd v.	739
Cuneo Fruit & Importing Co. v. G.T.R. Co.	107	De Blois Estate, Re.	144
Cunningham, Stewart v.	692, 699	Décarie v. Archambault.	382
Cunningham, Tidy v.	312	Decary, Birchall v.	251, 253
Curley v. Village of New Toronto.	145	Dechêne v. C.P.R. Co.	100, 214, 271, 283
Currie, Foster v.	524	Deeks, Cook v.	164
Currie v. Sperer.	489	Deere Plow Co., John, v. Knudston.	371
Curry v. Girardot.	486	Deering, Re.	295
Curry v. Mattair.	695	Defoe, McAllister v.	248
Curry v. McGregor.	291	De Grace, Sweeney v.	721
Curry, R. v.	346, 648	Dehid, Dufour v.	432
Curry v. Sandwich, Windsor and Amherstburg R. Co.	642	Deisler v. Spruce Creek Power Co.	369, 476, 477
		Delap v. C.P.R. Co.	550
		Deldo v. Gough-Sellers Investments.	469, 474

CASES DIGESTED.

XV

DeL-Doe.]	COLUMN	Doh-Doy.]	COLUMN
DeLisle, Willie v.	612	Dohan, Larue v.	179
Del Sole v. City of Montreal	429, 501	Doherty v. Giroux	571, 657
Demers, Allard v.	64	Doig v. Mathews	161
Demers v. C.P.R. Co.	452	Dolgoft v. Kenen	488
Demers, Frechette v.	31	Doll, King v.	52, 53
Demers, Hébert v.	275, 427	Dolson, Beaver Lumber Co. v.	184
Demers, Lemelin v.	696	Dome Oil Co., Alberta Drilling Co. v.	142, 159
Demers v. Strachan	338	Dominion Atlantic R. Co., Wolfesville Milling Co. v.	579
De Mesquito, R. v.	35, 280	Dominion Automobile Co., Small v. 610, Dominion Bakery Co., Leitch Bros. Flour Mills v.	386
Denholm v. Guelph & Goderich R. Co.	586	Dominion Bank, Collins v.	64
Denis Advertising Signs, Loranger v.	628	Dominion Bed Manuf. Co., Fitzherbert v.	170
Denis Advertising Signs v. Martel Stewart Co.	207, 271	Dominion Cannery, Travato v.	462
Denis, Quaker Oats Co. v.	123, 430, 538	Dominion Coal Co., McSorley v.	450
Dennis Canadian Co., Conway v.	583	Dominion Construction Co., Guardian Trust Co. v.	451
Dennis's Case; Re Dominion Milling Co.	171	Dominion Express Co., Trenholm v.	99, 279, 731
Depatie v. Bedard	723	Dominion Fire Ins. Co., Nakata v.	356, 357, 358, 365
Dereham, Tp. of, Robinson, Little & Co. v.	325	Dominion Fireproofing Co., Black v.	248, 390
DeSable Union v. Warren	611	Dominion Fish Co. v. G.N.W.T. Co.	666
De Sambor, Barnard v.	189, 537	Dominion Lumber Co. v. Halifax Power Co.	217
De Sambor, Dessauls v.	285	Dominion Manuf. Ltd., Marshall v.	159
Desaulniers, Hoffman v.	89	Dominion Milling Co., Re; Dennis's Case	171
Desaulniers v. Montreal	494	Dominion Permanent Loan Co., Morgan v.	482
Desautels v. McClellan	433	Dominion Stamping Co., Lauzon v.	520
Deschamps v. City of Montreal	502	Dominion Steel & Iron Co., Burt v.	262
Deschêne, Bois v.	423	Dominion Textile Co. v. Diamond White-wear Co.	209
Desilets v. Laplante	458	Dominion Trust & Harper, Re.	174
Desjardins v. Village de Ste. Rose	19	Dominion Trust Co., Mowat v.	172
Desmond, J. I. Case Threshing Machine Co. v.	70	Donaldson v. Acadia Sugar Refining Co.	622
De Soles v. C.P.R. Co.	582	Donnelly, G.T.R. Co. v.	691
"Despatch," The, The King v.	6, 7, 8, 207	Donohue v. McCallum	140
Desroches v. Bell Telephone Co.	666	Donovan v. Chatham Bridge Co.	149
Dessaules v. De Sambor	285	Donovan v. Excelsior Life Ins. Co.	357
Dessert, Girard v.	608	Donovan v. Whitesides	605
Déval, Clement v.	394	Doran, McKinnon v.	136
Devins, Re	725	Dorchester Electric Co., Fortin v.	173
Devitt v. Mutual Life Ins. Co.	357, 360	Dorchester Electric Co. v. King; Thomson; Industrial Securities Co.	166, 168, 631
Dewar's Case; Re Farmers Bank	66	Dorion v. Jodoin	533, 701
DeWynter v. Fulton	608	Dorion v. Robert	333
Dhana Singh, R. v.	740	Dorr, Fee v.	698
Diamond Whitewear Co., Dominion Textile Co. v.	209	Doucet, Ex parte; Rex v. O'Brien	110
Dicarlo v. McLean	627	Doucet, Pauzé v.	45
Dick v. Lambert	709	Dougan v. Auer Incandescent Light Manuf. Co.	460
Dickey, Long Dock Mills Co. v.	305	Douglas v. Burlie	695
Dickey, R. v.	108, 379, 651	Douglas, Campbell v.	276, 484, 693
Dickie, Gass v.	645	Douglas v. Eastern Car Co.	162, 165
Dickie, Scottish Canadian Canning Co. v.	162	Douglas v. Locke	673
Dickson, Kennedy v.	254	Douglas v. Vivian	18, 288, 411
Diehl v. Garritt; Re Imperial Paper Mills	177, 179	Douglas, Weddell v.	118
Di Lena v. The King	29, 680	Dowdy v. General Animals Ins. Co.	358
Dill v. G.T.P. Coast S.S. Co.	96	Downs v. Fisher	60
Dillabough, Scharf v.	600	Doyle, Boutin v.	5
Dillman, Kirton v.	154	Doyle v. Couture	228, 593
Diner, Business Brokers v.	88	Doyle v. Foley-O'Brien Ltd. 130, 216, 449, 454	
Dingman, Re	291		
Dionne, City of Montreal v.	505		
Dirks v. Fast	182		
Diver & Breen, Aspinall v.	306		
Dixon, Re	723		
Dochendorff v. Mester	50		
Dodds, Can. General Electric Co. v.	386		
Dodds, Union Bank v.	70		
Dodier v. Que. Central R. Co.	581		
Doel v. Kerr	430		

Doy-Eck.]	COLUMN	Eco-Far.]	COLUMN
Doyle v. Moirs	37, 455, 457	Economic Realty Ltd. v. Montarville Land Co.	543
Dredge, Neely's Limited v.	396	Edelstone, Cohen v.	31, 619
Drennan, Goodison v.	32	Edington, Hopkins v.	706
Drewry Estate, Re	235, 637	Edmonton, City of, Edwards v.	667
Drinkle, Steedman v.	301, 631	Edmonton, City of, Hackett v.	446
Drouin v. Gaudet	337, 591	Edmonton, City of, Kerley v.	33
Drouin, Legault v.	591	Edmonton, City of, Livingstone v.	501, 530, 533
Drury v. C.P.R. Co.	100	Edmonton, City of, Pon Yin v.	46, 296, 503
Drury, Dart v.	536, 687	Edmonton, City of, Rowland v.	226
Dube v. Algoma Steel Corporation	223	Edmonton Industrial & City of Edmonton, Livingstone v.	184, 499, 500, 533
Dubois v. Bailey	561	Edmonton Portland Cement Co., Canada Foundry Co. v.	210, 222
Dubord, Simard v.	29	Edmonton School Board, Clowes v.	614
Dubuc, Heirs of A.J., Rousseau v.	612	Edwards, Re	363
Dubuc v. Montreal & Aztec Oil Co.	350, 499	Edwards v. City of Edmonton	667
Duchesne, Bell Telephone Co. v.	150	Edwards v. Town of North Bay	326
Duclos v. Bilodeau	167	Egan v. McArthur	721
Dudemaine v. Pelletier	86	Elliott, Brodeur v.	49
Duff v. Upton	4, 627	Elliott v. Holmwood	239
Duffy v. Duffy	264, 369	Elliott, Re Myhra and	440
Dufour v. Dehid	432	Elliott v. Simpson	146
Dufresne, Cote v.	71	Elliott & Son Ltd., Re	176
Dugas, The King v.; Ex p. Aylward	648	Ellis, Re	649
Dugas, The King v.; Ex p. McLeary	378	Ellis, Rex ex rel. Boyce v.	19
Dugas, The King v.; Ex p. Paulin	380	Ellis, Robinson v.	585
Dugas, R. v.; Ex parte Legere	668	Ellis, Standard Bank v.	596
Dumphy v. Cariboo Trading Co.	90	Empey, Lindsay v.	56
Duncan, Re	234	Empire Lumber, Mainland Iron Works v.	155
Duncan & Buchanan v. Pryce Jones	560, 603	Erdman v. Consolidated Mining & Smelting Co.	511
Duncan v. Cooper	37	Erindale Power Co. v. Interurban Electric Co.	151, 255
Duncan, Western Trust Co. v.	223	Ernesttown Rural Telephone Co. v. Bell Telephone Co.	666
Dunham v. Cape Breton Electric Co.	642	Escort, The, Humboldt v.	612
Dunlop, Butler v.	600	Esquimalt & Nanaimo R. Co., Cumberland Board of Trade v.	101
Dunn v. Wheatley	335	Esquimalt & Nanaimo R. Co., McPhee v.	33, 271, 679
Dunning, White v.	46, 341	Esquimalt & Nanaimo R. Co., Town of Courtney v.	576
Duplessis, Fleming v.	42	Essex Terminal & Sandwich, Re	579
Duplessis, Imperial Oil Co. v.	538	Estate of John Manuel, The King v.	220
Dupont v. Boyer	535	Euphrasia, Tp. of, v. County of Perth	322
Dupont v. Dupont	367	Evangeline Fruit Co. v. Provincial Fire Ins. Co.	359
Dupuis v. Blouin	652	Evans v. Bradburn	47
Durrell, Re	729	Evans, Ex parte	240, 318
Dusseault v. Kopp	563	Evans v. Fisher Motor Co.	445
Dutka v. Bankhead Mines	456	Evans, Johnstone v. Ashcroft	484
Du Tremble v. Poulin	16	Evans v. Lalonde	59
Dutton v. C.N.R. Co.	267, 582, 583, 670, 684, 713	Evans, R. v. Re Fisher	129
Dutton Wall Lumber Co. v. Ferguson	559	Everton v. Kilgour	511
Duval, Langevin v.	87, 133	Ewing v. McGill	491
Dwyer, Teasdale v.	404	Excelsior Life Ins Co., Donovan v.	357
Dyet v. Truesdale	385	Factories Ins. Co. v. Laforest	359
Dykeman, Orchard v.	534	Fairgrieve, Joss v.	32, 384, 491
E. & N.R. Co. v. City of Courtenay	494	Fairweather, Laleune v.	605, 610
Eansor & Co., Ballantyne v.	455	False Creek Reclamation Act, Re	40, 43, 44, 221, 369
Earley v. Winnipeg Electric R. Co.	517	Falsetto, Brunswick Balke Collender Co. v.	212
Early v. C.N.R. Co.	582	Farah v. Lawless	548
Easements, Re	416	Farb v. Nelson	299
East v. Clarke	9, 10, 403		
East v. East	243		
Eastern Car Co., Douglas v.	162, 165		
Eastern Trust Co., Beal v.	727		
Eastern Trust Co. v. Mackenzie, Mann & Co.	129, 193, 531, 577, 578		
Eastern Trust Co., O'Mullin v.	261		
Eastern Trust Co., Stinson Reeb Builders' Supply Co. v.	37		
Eastnor, Tp. of, Parsons v.	41		
Eaton, Marshall-Wells Co. v.	368		
Eckardt, Thames Canning Co. v.	134, 600, 604		

Far-Fol.]	COLUMN	Fol-Fri.]	COLUMN
Farmer's Bank, Re; Dewar's Case.....	66	Follis v. Baird.....	684
Farrell, R. v.....	202, 203, 637, 649	Fong Lee, Tom Gung v.....	592
Farrell v. The "White".....	616	Fontaine v. Cabana.....	462, 627
Farthing, Spencer v.....	523	Foord v. Foord.....	243
Fashion Shop, Re.....	180, 409	Forbes, Davison v.....	686
Fast, Dirks v.....	182	Forbes, Price v.....	148
Fauchaux v. Georgett; Rex v. Georgett (No. 2).....	26, 108, 110	Ford, Buff Pressed Brick Co. v.....	166
Faulkner Ltd., Re; City of Ottawa's Claim.....	178	Fordham v. Commonwealth Trust Co...	402
Fawcett, Revelstoke Sawmill Co. v.....	73	Foreman, Cook v.....	546
Fearnley's Assignment, Re.....	54	Forest v. Parish of L'Assomption.....	495
Fee v. Dort.....	608	Forget v. Cement Products Co.....	85, 168
Fees, Re Assurance.....	417	Forget v. Lachine, J.-C. & M. R. Co. 45,	262
Feindel v. Gunn.....	34	Forrest, Paysant v.; Re Mott.....	727
Feinstein, Davis v.....	110, 267, 389	Forsythe, Davidson v.....	306
Felton, R. v.....	618	Fort Frances, Re Ontario & Minnesota Power Co. &.....	25, 661, 662
Fenwick, Re.....	294	Fort Frances, Town of, Cyr v.....	214
Ferguson, Canada Steel & Wire Co. v. 61,	426	Fort Frances, Town of, v. Ontario & Minnesota Power Co.....	639
Ferguson, Dutton Wall Lumber Co. v.....	559	Fort George Lumber Co. v. G.T.P.R. Co.....	715, 716
Ferguson, O'Leary v.....	305	Fortier v. Can. L. & P. Co.....	217
Ferland v. Ferland.....	538	Fortier v. Lemay.....	65
Fernand v. Metropolitan Life Ins. Co....	360	Fortin v. Dorchester Electric Co.....	173
Fernie-Fort Steele Brewing Co. v. C.P.R. Co.....	100	Fortin, Laberge v.....	540
Ferrie v. Meikle.....	611	Fortin, Roy v.....	52, 294
Ferris, Hagen v.....	697	Fortune Estate, Re.....	293
Fertile Belt, Re Rur. Mun. of.....	654	Fort William Board of Trade v. C.P.R. Co.....	104
Fickles, Lalonde v.....	147	Fort William Commercial Chambers, Anderson v.....	472, 474
Fidelity Oil & Gas Co. v. Janse Drilling Co.....	155	Fort William Commercial Chambers v. Braden.....	167
Field, Short v.....	347	Foshay, Shetler v.....	414
Filday, Powell Lumber v.....	469	Foss v. Sterling Loan.....	286, 391
Filiatrault v. Meloche.....	388, 528	Foster v. Brocklebank.....	471, 473
Finch, Re C.N.P.R. Co. and.....	44	Foster v. Currie.....	524
Finch v. Minnie.....	333	Foster v. Hope.....	23
Findlay v. Battram.....	427	Foster v. Ryckman.....	238
Findlay v. Howard.....	638	Foster v. Trusts & Guarantee Co.....	54
Finkbeiner v. Yeo.....	370, 626	Foster v. U.S. Fidelity & Guaranty Co..	36
Finkelstein, Persofsky v.....	607	Fournier, Lafontaine v.....	296, 544
Finlay v. Boileau.....	333, 548	Fournier v. Soleil Pub. Co.....	421, 422, 424
Finlay and Darling, Re.....	723	Fox, Kempenfeldt Land Co. v.....	633
First National Bank of Palo Alto v. Kruse.....	230	Frain, R. v.....	617
First State Bank v. Clouthier.....	74	Frame v. Hay.....	72
Fischer, Re.....	726	Franco-Canadian Mortgage Co., Greig v.....	277, 412, 697
Fischer, Garrett v.....	78	Frank, Boston Shoe Co. v.....	164, 176
Fisher, Re.....	665	Frank v. Boston Shoe Co.....	176
Fisher, Downs v.....	60	Franker and Bartleman, Re.....	477
Fisher Motor Co., Evans v.....	445	Franklin, Gibson v.....	531
Fisher, Re; Rex v. Evans.....	129	Fraser Ltd., St. John & Quebec R. Co. v.....	27, 34, 218
Fitzgerald, Bending v.....	709	Fraser, McDermott v. 116, 117, 118, 410,	487
Fitzgerald v. Canada Cement Co.....	246	Fraser, City of, v. Berube.....	570
Fitzgerald v. Mayo.....	415	Frechette, Can. Pac. R. Co. v.....	447, 452, 453, 513
Fitzherbert v. Dominion Bed Manuf. Co.	170	Fr�chet�te v. Demers.....	31
Fitzpatrick, R. v.....	206	Fredericton Board of Trade v. C.P.R. Co.....	101, 104
Fleitmann v. The King; Heinze, Re.....	656	Freeland, Phipps v.....	601
Fleming v. Duplessis.....	42	Freeman, Van Camp v.....	245
Fletcher, Brooks v.....	277	Freeman v. Wright.....	446
Flore, Can. Pac. R. Co. v.....	456, 458	Freidenberg v. Frisching.....	2
Floyd v. Hanson.....	631, 605	French, Moses v.....	630
Flynn, Lake View Consols v.....	706	Frid Lewis Co. v. Holmes.....	175, 739
Fogh, British American Paint Co. v.....	599, 604, 609	Frid Lewis Co., Wortman v.....	466, 467, 472
Foley-O'Brien Ltd., Doyle v.....	130, 216, 449, 454	Friedman v. Mageau.....	698, 699
Foley, R. v.....	204		
Folkins; The King v.; Ex. p. McAdam...	647		

Fri-Geo.]	COLUMN	Geo-Gov.]	COLUMN
Friedman, O'Hearn v.	711	Georgian Bay Milling Power Co., Gentles v.	706
Friedman v. Scott.	72	Gerow, The King v.; Ex p. Gross.	185
Frisching, Freidenberg v.	2	Gettas, Ray v.	536
Frost, Bergh v.	302, 703	Gibb v. The King.	259
Fry & Moore v. Speare.	10	Gibbs v. Gibson.	532, 695
Fuller, Anderson v.	215	Gibney v. Yorkton.	503
Full, Willett Martin Co. v.	126, 180	Gibson v. Franklin.	531
Fulton, DeWynter v.	608	Gibson, Gibbs v.	532, 695
Furness Withy, Sullivan v.	461	Gibson v. Snaith.	36, 183, 635
Furois v. Grace.	235, 536	Gidlow, Hind v.	487
Fussell v. Colman.	393	Gier v. Van Aalst.	86
Gadbois v. Lauzon.	63	Gignac v. Can. North. Que. R. Co.	387
Gaetz, Jordan School District v.	272	Gignac, Can. North. Que. R. Co. v.	18
Gaffo v. MacDonald.	445	Giguère v. Colas.	163, 168, 701
Gagner, Lyman's Ltd. v.	431	Giguère, Lacroix v.	609
Gagnon, Le Syndicate de Rosemont v.	703	Gilbert v. Reynolds.	489, 490
Gagnon v. Maheux.	146, 155	Gilbert v. Southgate Logging Co.	27, 511
Gagnon, Nelson v.	703	Gilchrist, Van Zonnefeld v.	601
Gagnon, Panneton v.	294	Gilfoy, Western Motors Ltd. v.	34, 635
Gagnon, Valiquette v.	601	Gillies, Coffin v.	605
Gale v. Powley.	532, 551, 707, 708, 740	Gillingham v. Lewis.	549, 555
Gale & Williams, Huckell v.	393	Girard, Chevalier v.	546
Galibert, Martin v.	134, 603	Girard v. Dessert.	608
Gallagher v. Confer.	137, 445	Girard v. Ha-Ha-Baie.	40, 42, 258
Gallagher, McDonald v.	228	Girard v. Naud.	457
Gallow, Hamilton v.	153	Girard, Pencis v.	459
Galusha, Crocker v.	141	Girard, St. Pierre v.	4
Galvin v. Imperial Guarantee & Acci- dent Ins. Co.	396	Girardot, Curry v.	486
Gamache, City of Montreal v.	323, 326, 678	Girouard, Courtemanche v.	183
Ganzini v. Jewel-Denero Mines.	509	Girouard, Lariviere v.	457
Gardiner, Locomotive & Machine Co. v.	29	Giroux, Doherty v.	571, 657
Gardner v. Staples.	415	Glendenning, Coveney v.	164
Gariepy v. Greene.	31	Glenn, Beamish v.	520
Garland, Tidsbury v.; Re Lakeside Pro- vincial Election.	252, 254	Globe & Rutgers Fire Ins. Co. v. Wetmore.	210, 355, 562
Garment v. Charles Austin Co.	462	Gloucester, Rex v.; Ex parte Murchie.	111, 377, 526
Garnham, Re; Re Richardson.	498	Goddard, Hayes v.	698
Garrett v. Fischer.	78	Godfrey, Sheppard v.	691
Garrett, Pesant v.	88	Godkin v. Watson.	293
Garside v. G.T.R. Co.	585	Godson Contracting Co., Mining In- dustry Co. v.	134
Garth Co., Peterson v.	460	Gogan, Ex parte; Rex v. Steeves.	109, 381
Gartside v. Leland.	610	Gold, Re Kerr and.	249
Gasolene Launch B.B., Grand Trunk Pac. Coast S.S. Co. v.	613	Goldenburg, Re.	187
Gass v. Dickie.	645	Goldman, Rolph & Clark Ltd. v.	134
Gass, Lingley v.	421	Golightly v. Banning.	512
Gastonguay v. Town of Levis.	373	Good, McCune v.	212
Gates v. Renner.	22, 26, 30	Goodall, Mowatt v.	182, 355
Gaudet, Drouin v.	337, 591	Gooderham, Re Reid and.	415
Gaudet, Latimer v.	128	Gooderham v. Toronto R. Co.	642
Gaudreau v. City of Montreal.	503	Goodison v. Drennan.	32
Gault & Mackey, Levinson v.	352, 543	Goodrich Co. v. Robins Ltd.	563
Gauthier v. Werner.	607	Good & Rochester, McKay v.	76
Gauvreau, Cadrin v.	557	Goodwin, Branson v.; Same, Olsen v.	433
Gemmel, Hueston v.	27	Gordon v. Violette.	392
Gendreau v. Widder.	535	Gordon Mackay & Co., Toronto General Trusts v.	137
General Animals Ins. Co., Dowdy v.	358	Gorton Pew Fisheries Co., Melanson v.	624
General Animals Ins. Co. v. Montreal Tramways Co.	365	Gosfield North, Tp. of v. Tp. of Ander- don; Tp. of Gosfield North v. Same.	190
General Animals Ins. Co., Scharf v.	359	Gosselin, Nolin v.	321
Genser, Simpson v.	47	Gough-Sellers Investments, Deldo v.	469, 474
Gentile, R. v.	61	Gouin v. Javelle.	247
Gentles v. Georgian Bay Milling Power Co.	706	Gouinlock, Re.	725
Georgett, R. v. (No. 2).	26, 108, 110	Gouin, U.S. Fidelity v.	186, 238
		Goulet v. Gratton.	34, 336, 550
		Govenlock v. London Free Press Co.	423, 554

Gow-Gra.]	COLUMN
Gow, Soloway v.....	84
Gowans-Kent v. Assiniboia Club.....	160, 233
Gowland v. H.G. & B. Electric R. Co.....	580, 584
Goyer, Tassé v.....	312
Grace, Furois v.....	235, 536
Grady, Colonial Invest. & Loan Co. v.....	125, 482, 486
Graham, Re.....	729
Graham v. Brodeur Co.....	78, 554
Graham, Malotte Cream Separator Co. v.....	185
Graham, R. v.....	280
Grainger v. Order of Can. Home Circles.....	68
Gramm Motor Truck Co. of Canada, Gramm Motor Truck Co. of Lima v.....	140
Granby Consolidated, Lilja v.....	462, 518
Granby Consolidated, Meagher v.....	453
Grand Trunk C.P. & C.N.R. Cos., Can. China Clay Co. v.....	103
Grand Trunk, M.C. & P.M. R. Cos., Western Ontario Munic. v.....	102, 103
Grand Trunk Pac. Coast S.S. Co., Dill v.....	96
Grand Trunk Pac. Coast S.S. Co. v. Gasolene Launch B.B.....	613
Grand Trunk Pac. Development Co. v. Moose Jaw Securities.....	414, 416
Grand Trunk Pac. R. Co., Fort George Lumber Co. v.....	715, 716
Grand Trunk Pac. R. Co., Great West Supply Co. v.....	97, 428
Grand Trunk Pac. R. Co., Hile v.....	450, 454, 516
Grand Trunk Pac. R. Co., Montague v.....	444, 445
Grand Trunk Pac. R. Co., Phelan v.....	452
Grand Trunk Pac. Town & Dev. Co., Norquay v.....	160, 212
Grand Trunk Pac. Town & Dev. Co., Roaf v.....	414, 416
Grand Trunk R. Co., Boland v.....	579
Grand Trunk R. Co. v. Brassard.....	96, 681
Grand Trunk R. Co., Burrows v.....	185, 278, 429, 580
Grand Trunk R. Co., City of Lachine v.....	322
Grand Trunk R. Co., Collin v.....	569, 581
Grand Trunk R. Co., Cuneo Fruit & Importing Co. v.....	107
Grand Trunk R. Co. v. Donnelly.....	691
Grand Trunk R. Co., Garside v.....	585
Grand Trunk R. Co. v. Hamilton & Toronto Sewer Pipe Co.....	257
Grand Trunk R. Co. v. Hepworth Silica Pressed Brick Co.....	106
Grand Trunk R. Co., Irwin v.....	679, 680
Grand Trunk R. Co. v. James.....	673
Grand Trunk R. Co., Lavery v.....	457
Grand Trunk R. Co., McIntyre v.....	455
Grand Trunk R. Co., Mitchell v.....	584, 586
Grand Trunk R. Co., Pepin v.....	460
Grand Trunk R. Co., Reo Sales Co., v.....	98
Grand Trunk R. Co. v. Robinson.....	99, 101
Grand Trunk R. Co., Sénécal v.....	428, 586
Grand Trunk R. Co., Standard Crushed Stone Co. v.....	257
Grand Trunk R. Co., Wilston v.....	38, 461
Grand Valley R. Co., Re.....	501
Grand Valley R. Co., Trusts & Guarantee Co. v.....	579, 588

Gra-Had.]	COLUMN
Grand Valley R. Co., Wood v.....	18, 154, 210
Grantham, Martin v.....	386
Grant Smith & Co., Parkhurst v.....	447
Grant's Spring Brewery Co. v. E. Leonard & Sons.....	604
Gratton, Goulet v.....	34, 336, 550
Gratton v. Lavoie.....	438
Gratton Separate School, Regina Public School v.....	616
Gray v. National Trust Co.....	442
Gray v. Steeves.....	62, 432, 569
Gray v. Wabash R. Co.....	584
Grayson v. Consolidated Land, etc., Co.....	551
Great Northern Ass. Co., Re Black's Case.....	171
Great North West. T. Co., Dominion Fish Co. v.....	666
Great West Life, Pearlman v.....	355
Great West Lumber Co., Gregory v.....	388
Great West Saddlery v. Griesbach.....	486
Great West Supply Co. v. G.T.P. R. Co.....	97, 428
Green v. B.C. Electric R. Co.....	643
Green v. C.N.R. Co.....	45, 184, 260, 262
Green, Crichton's Ltd. v.....	408
Green Fuel Economiser Co. v. City of Toronto.....	62
Greene v. Appleton.....	696
Greene, Garipey v.....	31
Greer v. C.P.R. Co.....	428, 583
Greer, Hart v.....	310, 370
Gregoire v. Markham Co.....	285
Gregory v. Great West Lumber Co.....	388
Greig v. Franco-Canadian Mortgage Co.....	277, 412, 697
Grenier, Carriage Harness v.....	290
Grieg & City of London, Re.....	374
Griesbach, Great West Saddlery v.....	486
Griesbach v. Hogan.....	395
Griese & Wood, Rolt v.....	703
Griesman, Beswetherick v.....	489
Griffin & Welch, Spadafora v.....	149
Grills v. City of Ottawa.....	326
Grobb, Swayze v.....	166
Gross, Ex parte; The King v. Gerow.....	185
Gross, Paterson v.....	488
Grossman, Bradshaw v.....	554, 556
Grouch, Pinx v.....	150
Guardian Ass. Co. v. Town of Chicoutimi.....	365
Guardian Trust Co. v. Dominion Construction Co.....	451
Guay, Lachapelle v.....	281, 347
Guelph & Goderich R. Co., Denholm v.....	586
Guimont, Village of Montmorency v.....	340
Guindon, Lafontaine v.....	335
Gummerson, Wallace v.....	706
Gunn, Feindel v.....	34
Gunn v. Hudsons Bay Co.....	552
Gurofski, Antiseptic Bedding Co. v.....	354, 361
Gusetu v. Date; Re Gusetu.....	317
Gusetu, Re; Gusetu v. Date.....	317
Guthrie, Merchants Bank v.....	566
Guy, Hainault v.....	242
Hackett v. City of Edmonton.....	446
Hackett, Shier v.....	707
Haddad, Coristine Limited v.....	232
Haddad, Last West Lumber Co. v.....	367, 368, 561

Hag-Har.]	COLUMN
Hagen v. Ferris	697
Hague, O'Shea v.	431
Ha-Ha-Baie, Girard v.	40, 42, 258
Haight v. Davies	479
Hainault v. Guy	242
Haines, Boydell v.	690, 699, 710
Haines, Smith v.	167
Haley, Robinson v.	680, 682, 732
Halifax, City of, Coleman v.	324
Halifax, City of, The King v.; Re Stevens.	439, 526, 661
Halifax & Kane, Re City of.	664
Halifax Power Co. v. Christie	248, 280
Halifax Power Co., Dom. Lumber Co. v.	217
Halifax Power Co., Miller v.	10, 135, 261, 590, 591, 675, 712
Hall, Bank of Ottawa v.	75
Hall, Bank of Toronto v.	76
Hall, Herzig v.	353
Halpin v. Victoria	299
Halstead v. Sonshine	486, 491
Hamel, Buteau v.	337
Hamelin v. Vanasse	65
Hamer, McGuinty v.	238
Hamilton, Re	227, 293
Hamilton v. Church	122, 242
Hamilton, City of, Jess v.	283
Hamilton v. Gallow	153
Hamilton, G. & B. Electric R. Co., Gowlan v.	580, 584
Hamilton Ideal Manuf. Co., Re	173
Hamilton v. Margolius; Morrison v. Margolius	702
Hamilton Street R. Co v. Weir	643
Hamilton Street R. Co., Weir v.	643
Hamilton & Toronto Sewer Pipe Co., G. T. R. Co. v.	257
Hammond v. Daykin & Jackson	188, 213
Hammond, Langley v.	152
Hammond v. Nesom	313
Hancock v. Rose	392
Hanna v. City of Victoria	429
Hannah & Campbellford L. O. & W. R. Co., Re	218
Hannigan v. McLeod	526, 527
Hanson, Floyd v.	631, 695
Hanson v. Ross	518, 519
Harel, Versailles v.	182, 382
Harness, Bice v.	154
Harper & Tp of East Flamborough, Re	495
Harris, Re	292
Harris Construction Co. v. Montreal	507
Harris & Craske, Shierman v.	311, 362
Harris, Mills v.	384, 393, 531
Harris v. Murk	77
Harris, Slobodian v.	480
Harris v. Townsend	564
Harris v. Wilson	70
Harris v. Wood	537
Harrison, Re	288
Harrison v. Mathieson	334
Harrison v. Schultz	11
Hart, Bell v.	286
Hart v. Greer	310, 370
Hartford, Laidlaw v.	363
Hartley, Powell Lumber Co. v.	469, 473
Harvey, Can. Bank of Commerce v.	556
Harvey v. Lawrence	266, 703
Harwood v. Assiniboia Trust Co.	54

Has-Him.]	COLUMN
Hassan v. Reynolds	299
Hatch v. Powell River Paper Co.	448
Hauberg, R. v.	281, 619
Haug Bros. v. Murdock	603, 605
Haug Bros. & Nellermeoe v. Baade	606
Hawes v. Hawes	37
Hawkes, Jennie, R. v.	200, 231
Hawkins, Bank of Nova Scotia v.	334
Hawkins v. Miller	351
Hawkins, Moody v.	239
Hawkshaw v. Peltier	187
Hay, Frame v.	72
Hay v. Lacoste	535
Hay, Merchants Bank v.	385, 386
Hayes v. Blohm; Blohm v. Hayes	140
Hayes v. Goddard	698
Hayes v. Ottawa Electric R. Co.	644
Hayes, Wilkinson v.	396
Haynes, Johnston v.	428
Haynes, R. v.	681
Hazel v. Lund	470, 471
Hazell v. Cullen	303
Hazen, Johnston v.	122, 442
Healy v. Ross	245
Hearn v. Nelson	25, 516, 583
Hebert, Charpentier v.	254, 492
Hébert v. Demers	275, 427
Hedman, Sanders v.	304
Heinrichs v. Weins	155, 421
Heinse, Re.; Fleitmann v. The King	656
Heller, Tutty v.	488, 489
Hemphill v. Bell	192
Henderson, Re.	293
Henderson, London Guarantee & Accident Co. v.	238, 478
Henry v. Beaulieu	374, 599
Henry, Putnick v.	392
Henry, R. v.	318
Hepworth, Clark v.	705
Hepworth Silica Pressed Brick Co., G. T. R. Co. v.	106
Heron v. Lalande	663
Herrington v. Carey	78
Herschorn v. St. Mary's Young Men's Society	406
Hertle v. Jenny	599
Hersig v. Hall	353
Hesson, McEwan v.	27
Hetherington v. Sinclair	211, 482, 711
Hettinger, Ballantyne v.	701
Hewa, R. v.	61
Hewitt v. The "Skeena"	628
Hextall, Kennerley v.	90
Heyes Brothers, Re	173
Hibbard Co., St. John & Que. R. Co. v.	578
Hibbard v. Tp. of York	189
Hickney, Royal Bank v.	75
Hicks, Carter v.	38
Hicks v. Lamarre	564
Hile v. G.T.P. R. Co.	450, 454, 516
Hill v. Carter-Halls Aldinger Co.	454
Hill, Latimer v.	528
Hill v. Storey	466
Hill v. Toronto R. Co.	713
Hille, Wyton v.	3, 15
Hillman, Imperial Elevator & Lumber Co. v.	186, 265
Hills, Burns v.	442
Himmelsbach, R. v.	378

Hin-Hug.]	COLUMN
Hind v. Gidlow	487
Hislop, Re	190, 723
Hislop & Stratford Park Board, Re	183, 221, 369
Hitchcock v. Sykes	562, 704
Hoadley v. Bayntun	403
Hoare, R. v.	38, 111, 378, 380
Hocken v. Shaidle	302
Hodges & Rowe, Patterson v.	30, 130
Hoffman, Crane v.	602
Hoffman v. Desaulniers	89
Hogan, Griesbach v.	395
Hogate v. Hogate	445
Hogg v. Hogg	242
Hogg, R. v.	85
Hohlstens, Black v.	310
Holden Co., Cooper v.	407
Holden, Royal Trust v.	621
Holgevac, New York & Pennsylvania Co. v.	181
Hollinger Gold Mines, Dangler v.	14
Holloway, Parker v.	739
Holmes, Frid Lewis Co., v.	175, 739
Holmested v. C.N.R. Co.	37, 349
Holmested v. Corp. of County of Huron	494, 505
Holmwood, Elliott v.	239
Holowaskawe, R. v., Rex v. Croft	644
Holstead v. Sommer	296
Holt Timber v. McCallum	34
Home v. Boehm & Co.	163
Home Investment & Savings Ass'n v. Middleditch	484
Homewood Sanitarium v. Parker	334
Hope, Foster v.	23
Hopkins v. Edington	706
Horlick, Richer v.	593
Horne, Stewart v.	128
Horner, Cushing v.	385
Hough Lithographing Co., Re	173
Houghton v. C.N.R. Co.	398
Houle, Pélissier v.	626
Houseman v. LePage	433
Howard v. City of St. John	354
Howard, Findlay v.	638
Howard v. Miller	633, 690
Howard, McArdle & Davidson v.	189
Howard v. Stewart	630
Howe, R. v.	23, 202, 204
Howe Sound, Roray v.	163
Howson v. City of Medicine Hat; Yuill v. City of Medicine Hat	350
Hoy, Weltz v.	604
Hryczuk, R. v.	668
Hubbard, Rex v.; Monahan, Ex Parte	379, 647, 648
Hueckell v. Gale & Williams	393
Huddlestons, Builders Supply Co. v.	465
Hudon v. The King	224
Hudson Bay Ins. Co., Adams v.	365
Hudson Bay Mines, Danis v.	449, 453
Hudsons Bay Co., Gunn v.	552
Hudsons Bay Co., Re Osborne and	602
Hudson's Bay Co., R. v.	435
Hueston v. Gemmel	27
Hughes v. Cordova Mines	490
Hughes, Ex parte	46, 317
Hughes v. Northern Electric & Manuf. Co.	159

Hul-Int.]	COLUMN
Hull v. Allen	639
Hull, City of, McCarthy v.	599
Hull, City of, Wilson v.	142
Hull v. Seneca Superior Silver Mines	448, 450
Humberstone v. Toronto and York Radial R. Co.	642
Humbervale Cemetery Co., Smith v.	160
Humboldt v. The Escort	612
Hume v. McCarthy	230
Hunt v. Beck	718
Hunt and Bell, Re	27, 663
Hurley, Kalbfleisch v.	474
Huron, Corp. of County of, Holmested v.	494, 505
Hurtubise, Bédard v.	337
Huth v. City of Windsor	326
Hutton, R. v.	667
Hyatt v. Allen	163
Hyde v. Chapin	483
Hydro-Electric Com. of St. Catharines, Lincoln Electric L. & P. Co. of St. Catharines v.	500
Hydro-Electric Power Com. v. London Port Stanley R. Co.	575
Idsardi, Pratt v.	214, 445
Imperial Bank, McCallum, Hill & Co. v.	404, 405
Imperial Canadian Trust Co. v. Wood Vallance	79
Imperial Elevator & Lumber Co. v. Hillman	186, 265
Imperial Elevator & Lumber Co. v. Kuss	314, 381, 740
Imperial Guarantee & Accident Ins. Co., Galvin v.	396
Imperial Land Co., Town of Sturgeon Falls v.	658
Imperial Oil Co. v. Duplessis	538
Imperial Paper Mills, Re; Diehl v. Carritt	177, 179
Independent Order of Foresters v. Town of Oakville, Re	657
Indian River Gravel Co., Can. Bank of Commerce v.	386
Industrial Securities Co., Dorchester Electric Co. v.	166, 168, 631
Infants, Re Adkins	316
Ingles, Sharp v.	116, 395, 608
Ingraham, Kirk v.	536
Inkster, R. v.	35, 282
Inland Express Co., B.C. Express Co. v.	98
Inland Lines, MacTague v.	447
Insenga, Sonenblum v.	410
Insurance Co. of North America, Bacon v.	356
International Harvester Co. v. Jacobsen	79, 418, 534
International Harvester Co. v. Knox	76
International Harvester Co. v. Leeson	388, 607
International Harvester Co., McCready v.	115
International Harvester Co., Price v.	222
International Steel Corp., Anglo-American Fire Ins. Co., v.	240
International Supply Co. v. Black Diamond Oil Fields	309

Int-Joh.]	COLUMN	Joh-Ker.]	COLUMN
International Trap Rock Co., Re.	178	Johnston, Rushworth v.	565
Interurban Electric Co., Erindale Power Co. v.	151, 255	Jollymore v. Acker.	83
Interurban Electric Co. v. Toronto.	497	Joly v. Piche.	346
Interurban Electric Co., Toronto Electric Light v.	140	Jonah, The King v.; Ex parte Pugsley.	107
Invincible Renovator Mfg. Co., Batho v.	542	Jones v. Burgess.	515, 688
Irving & Morris v. Bucke.	392	Jones v. Momberg, Re L. Jones.	20, 187, 596, 720, 722
Irwin v. Campbell.	41, 407	Jones, Momberg v.; Re L. Jones.	20, 187, 596, 720, 722
Irwin v. G.T.R. Co.	679, 680	Jones v. Sullivan.	572
Isler, Re.	233	Jones v. Town of Swift Current.	323, 327
Isman, Sproule v.	143	Jones v. Tp. of Tuckersmith; Re Jones & Tp. of Tuckersmith.	247, 328, 329, 495
J. I. Case Threshing Machine Co. v. Desmond.	70	Jones & Tp. of Tuckersmith, Re; Jones v. Tp. of Tuckersmith.	247, 328, 329, 495
J. I. Case Threshing Machine Co. v. Wrenshall.	602	Jones, Tucker v.	279, 632, 633
Jack, R. v.	399, 568	Jones, Wylie v.	560
Jackes v. Mail Printing Co.	422	Jordan School District v. Gaetz.	272
Jackson, Re.	726	Joron, Roch v.	91
Jackson v. C. P. R. Co.	216, 278, 683	Joss v. Fairgrieve.	32, 384, 491
Jackson Potts & Co., Wolsely Tool & Motor Car Co. v.	98, 554, 563	Journal Printing Co. v. McVeity.	349, 506
Jackson Water Supply Co. v. Bardeck.	469	Jousseau, R. v.	343
Jackson, Watson v.	129	Jubb, Stewart v.	194, 196
Jacobsen, International Harvester Co. v.	79, 418, 534	Judge, R. v.	545
Jacobson, Stewart Sheaf Loader v.	117	Julien, La Cie., Labbé v.	459
Jacques v. Léonard.	89, 334	Jupp, Piggott v.	564
Jacques v. Normandeau.	712	K. & S. Auto Tire Co. v. Rutherford.	315
Jadis v. Porte.	276	Kaakee v. Kaakee.	335
Jagat Singh, R. v.	331, 681	Kaine &c. Transportation v. Morgan.	22, 233
Jalbert, Ouellet v.	11	Kaiser, Krom v.	151, 415, 634
James, G.T.R. Co. v.	673	Kalbfleisch v. Hurley.	474
James, R. v.	203, 205, 342, 343	Kaministiquia Power Co. v. Superior Rolling Mills Co.	209
James v. Town of Bridgewater.	505	Katz, Klein v.	438
James, Vansickle v.	246	Kaufman, Slatky v.	697
James Bay & E. R. Co. v. Bernard.	285, 395, 555, 738	Kaulbach v. Begin.	78
Janse Drilling Co., Fidelity Oil & Gas Co. v.	155	Kaulbach v. Woodworth.	391
Jarry v. Baril.	91	Kaye v. Burnsland Addition, Ltd.	232
Jarvis v. Keith.	238	Kazaransky v. Montreal Tramways Co.	4, 396, 680
Jarvis Local Option By-Law, Re.	373	Keane, Cragg v.	27
Jasper v. Toronto Power Co.	448	Kearney v. Dansereau.	513
Jasper Liquor Co., Re.	170, 180	Keating, Royal Trust Co. v.	410
Jasper Liquor and Winding-up Act, Re.	177	Keech v. Sandwich, Windsor & Amherstburg R. Co.	511
Javelle, Gouin v.	247	Keith, Jarvis v.	238
Jeffares v. Wolfenden.	513	Kelly, Attorney-General v.	237, 549, 639
Jeffress v. MacKinnon.	275	Kelly v. C.P.R. Co.	74
Jeffrey, Ritchie v.	49	Kelly & Sons v. Mathers, C. J. K. B.	124, 313, 732
Jenny, Hertle v.	599	Kemp and City of Toronto, Re.	495, 636, 661
Jess v. City of Hamilton.	283	Kempenfeldt Land Co. v. Fox.	633
Jewel-Denero Mines, Ganzini v.	509	Kenderine Realty Co., Merriam v.	536, 537, 588
Jodoin, Dorion v.	533, 701	Kendler v. Bernstock.	475
Johansdotter v. C.P.R. Co.	14	Kenen, Dolgoff v.	488
John Deere Plow Co. v. Knudston.	371	Kennealy, Norton v.	77
John Martin Paper Co., Barr v.	564	Kennedy v. Dickson.	254
Johnson v. Anderson.	330	Kennedy, Laine v.	276
Johnson v. Butler.	465, 472	Kennedy v. Martin.	705
Johnson v. Oxford Knitting Co.	540	Kennedy, Overseers of the Poor v.	67
Johnson, R. v.	202, 203, 637, 649	Kennedy v. Suydam.	239
Johnson, Rex ex rel., v. Mock Sing.	28	Kennerley v. Hextall.	90
Johnson v. Roche.	209	Kenny, Stout v.	561
Johnson, Traunweiser v.	285, 711	Kerley v. City of Edmonton.	33
Johnston v. Carlin.	170	Kerr, Doel v.	430
Johnston v. Cayuga.	194	Kerr & Gold, Re.	249
Johnston v. Haynes.	428		
Johnston v. Hazen.	122, 442		

Ker-Kne.]	COLUMN
Kerr, Marwick v.....	537
Kilbuck Coal Co. v. Turner & Robinson.....	138
Kildonan Investment v. Thompson, 704.....	705
Kildonan and St. Andrew's Election. Re.....	254
Kilgour, Everton v.....	511
Kilgour, Murdock v.....	372
Killops v. Porter.....	240
Kimber, McGillivray v.....	622, 623
Kincardine, Shewfelt v.....	82, 93
King, Childs v.....	402
King v. Consumers Gas Co.....	327
King, Cusson Bros. v.....	143
King, Davidson v.....	406
King v. Doll.....	52, 53
King, Dorchester Electric Co. v. 166, 168.....	631
King v. Londerville.....	282
King, The, Abeles v.....	30, 297
King, The, Bonanza Creek Gold Mining Co. v.....	158
King, The, Booth v.....	669
King, The, v. Borden; Ex parte Kinnie.....	58, 107, 188
King, The, v. Bryson.....	108
King, The, Burn v.....	246
King, The, v. City of Halifax; Re Stevens.....	439, 526, 661
King, The, v. Comeau.....	669
King, The, v. The "Despatch".....	6, 7, 8, 207
King, The, Di Lena v.....	29, 680
King, The, v. Dugas, Ex parte Aylward.....	648
King, The, v. Dugas; Ex parte McLeary.....	378
King, The, v. Dugas; Ex parte Paulin.....	380
King, The, v. Estate of John Manuel.....	220
King, The, v. Folkins; Ex parte McAdam.....	647
King, The, v. Gerow; Ex parte Gross.....	185
King, The, Gibb v.....	259
King, The, Hudon v.....	224
King, The, v. Jonah; Ex parte Pugsley.....	107
King, The, Leamy v.....	571
King, The, v. Loggie.....	220
King, The, Montgomery v.....	196, 239
King, The, v. Munic. Restigouche; Ex p. Murchie.....	525
King, The, North Atlantic Trading Co. v.....	197
King, The, Quebec, J.-C. Electric Co. v.....	184, 369
King, The, v. Roach, Re Payzant Memorial Hospital.....	439
King, The, v. Romano.....	34, 679
King, The, Saindon v.....	215, 224, 430
King, The, v. Schooner Vallant.....	300
King, The, Shajoo Ram, v. (No. 2).....	522
King, The, v. Taylor.....	261
King, The, Turgeon v.....	454
King, The, v. Tweedie.....	9, 12, 246, 570
King, The, Waller v.....	23
King, The, v. Wilson.....	258
King, The, Wright v.....	86, 274
Kinnie, Ex parte; The King v. Borden.....	58, 107, 188
Kinnon, La Plante v.....	146
Kirk v. Ingraham.....	536
Kirton v. Dillman.....	154
Klein v. Kats.....	438
Klukas v. Thompson & Co., 384, 458, 461.....	510
Kneeland, Scandinavian v.....	565

Kni-Laf.]	COLUMN
Knickerbocker v. Union Trust Co., Re.....	589
Knight, Lundy v.....	701
Knowlton v. Union Bank.....	30
Knox, International Harvester Co., v.....	76
Knudston, John Deere Plow Co. v.....	371
"Kobe," The, Beck v.....	7
Kocurka, Berman v.....	341
Kohler v. Stoner.....	165
Kohlmeyer v. Canadian Bartlett Automobile Co.....	541
Kohn, Quebec Bank v.....	182
Kokatt, Collison v.....	23
Kolb, Maytag Co., Ltd. v.....	565
Kong, R. v.....	279
Koop v. Smith.....	304
Kopp, Dusseault v.....	563
Kreamer v. Clarkson.....	178
Krom v. Kaiser.....	151, 415, 634
Krom, Rydstrom v.....	13
Kruse, First National Bank of Palo Alto v.....	230
Kurtz, Luttrell v.....	29, 195
Kusch, Landes v.....	553, 708
Kuss, Imperial Elevator & Lumber Co. v.....	314, 381, 740
Kuss, Miller v.....	531, 740
Kuzin, R. v.....	731
Kwong Yick Tai, R. v.....	22, 195
Labadie v. Town of Levis.....	506
Labbe v. La Cie, Julien.....	459
Labelle v. Labelle.....	534, 557
Laberge v. Fortin.....	540
Laberge v. Laberge.....	534
Labrosse v. McLeod.....	186
La Caisse des Familles, Roy v.....	163
Lachance v. Cauchon.....	349, 352
Lachance, Pelletier v.....	460
Lachance v. Price.....	371
Lachance. R. v.....	47, 344, 345
Lachapelle v. Guay.....	281, 347
Lachapelle, Lauzon v.....	53
Lachine, City of, v. G.T.R. Co.....	322
Lachine City of, Pilon v.....	20, 374
Lachine, Jacques Cartier, etc., R. Co. v. Beaulieu.....	219
Lachine, Jacques Cartier, etc., R. Co., Forget v.....	45, 262
Lachine, Jacques Cartier, etc., R. Co. v. Mitcheson.....	219
Lachine, Jacques Cartier, etc., R. Co. v. Montreal Gas Co.....	256
Lachine, Jacques Cartier, etc., R. Co. v. Montreal Tramways.....	127, 257, 576
La Cie, D'Approvisionnement D'Eau v. La Ville Montmagny.....	530, 659, 661
Lacombe v. La Protection.....	355, 358
Lacoste, Cedars Rapids Mfg. & Power Co. v.....	44, 636
Lacoste, Hay v.....	535
Lacroix v. Giguère.....	609
Laferrière v. Neal Institute.....	154
Lafamme v. Levis Ferry.....	216, 281, 461
La Fleche, Rex ex rel., v. Sheppard.....	251, 499, 501, 523, 524
Lafontaine v. Fournier.....	296, 544
Lafontaine v. Guindon.....	335
Laforest, Factories Ins. Co. v.....	359
Lafortune, Vezina v.....	143, 418

Lai-Lav.]	COLUMN	Lav-Lib.]	COLUMN
Laidlaw v. Hartford.....	363	Lavery v. G.T.R. Co.....	457
Laine v. Kennedy.....	276	Lavigne, Premier Oil Co. v.....	143
Laird v. Taxicabs Limited.....	217	Lavigne v. Paquet Co.....	419
Lakeside Provincial Election, Re; Tidsbury v. Garland.....	252, 254	Lavine v. Sonshine.....	489
Lake View Consols v. Flynn.....	706	Lavoie, Gratton v.....	438
Lake Winnipeg Shipping Co., Mack v.....	502, 510	Law, Re.....	293
Lalande, Heron v.....	663	Law v. Lovell.....	418
Lalonde v. Fairweather.....	605, 610	Law, R. v.....	399, 648
L'Alliance Nationale, Routhier v.....	68	Lawless, Farah v.....	548
Lalonde v. Austria-Hungarian Sick Benefit Society.....	146	Lawler, Beamish v.....	61, 62, 687
Lalonde, Evans v.....	59	Lawrence, Harvey v.....	266, 703
Lalonde v. Fickles.....	147	Lawrence, Rex ex rel. Yates v.....	251
Lalonde, Trepannier v.....	706	Leadlay v. Union Stockyards Co.....	169
Lamarre v. Clairmont.....	88	Leamy v. The King.....	571
Lamarre, Hicks v.....	564	Lebel, Morin v.....	692
Lambert, Dick v.....	709	Lebel v. Security Life Ins. Co.....	162
Lambert v. L'Oeuvre, etc., de St. Jean.....	452	Le Brun, Re.....	728
Lamontagne v. Quebec R., L., H. & P. Co.....	509, 636	Le Bruyne v. Rur. Munic. of Laurier.....	657
Lamothe v. Corp. of St. Pierre of Verone.....	502	Le Burtis, Chambers v.....	490
Lamphier v. Brown.....	721	Lecavalier, Canestrari v.....	136, 143
Lancaster Separate School Trustees, McDonald v.....	616	Lechtzier, McKeown v.....	404
Landes v. Kusch.....	553, 708	Lecky v. Carman.....	147
Land Registry Act and Clancy, Re.....	590	Leclerc, Bibeau v.....	611
Land Registry Act and Shaw, Re.....	412, 557	Lecours, Cyr v.....	89, 149, 153, 559
Langevin v. Duval.....	87, 133	Lecours v. Dagenais.....	90
Langley v. Hammond.....	152	Ledingham v. Skinner.....	292
Langlois v. Charpentier.....	48, 140, 696	Ledoux v. Cameron.....	480
Langstaff v. Bar of Quebec.....	440, 625	Leduc, Walter v.....	80, 178, 612
Lannon v. S. S. Porter.....	622	Lee v. Chapin.....	606, 610
Laperle, Vézina v.....	510	Lee & Girard, Royal Bank v.....	37, 309, 492
Laplante, Desilets v.....	458	Leeson, International Harvester Co. v.....	388, 607
La Plante v. Kinnon.....	146	Leeson v. Moses.....	539
Laporte v. Brunet.....	333	Lefebvre, Latour v.....	334, 524, 574
Laprés, Meunier v.....	276, 361	Lefebvre, Messier v.....	250, 251
La Protection, Lacombe v.....	355, 358	Lefebvre, Montreal Tramways Co. v.....	642
Lareau v. Poirier.....	139	Legault v. Drouin.....	591
Lariviere v. Girouard.....	457	Legault, Marcl v.....	198, 707
Larkin, Weddell v.....	142	Legere, Ex parte; Rex v. Dugas.....	668
Laroche v. Laroche.....	335	Leitch Bros. Flour Mills v. Dominion Bakery Co.....	386
Laroche, Town of Coaticook v.....	32, 326, 514	Leland, Gartside v.....	610
Larochelle, Samson v.....	10	Lemay, Fortier v.....	65
Larsen, Pacific Great East. R. Co. v.....	221, 261	Lemelin v. Demers.....	696
Larson v. Anderson.....	194	Lemesurier v. Mahoney.....	236
Larue v. Dohan.....	179	Lendrum, Re.....	687
La Sauvegarde v. Daoust.....	356	Léonard, Jacques v.....	89, 334
L'Assomption, Parish of, Forest v.....	495	Leonard & Sons, Grant's Spring Brewery Co. v.....	604
Last West Lumber Co. v. Haddad.....	367, 368, 561	Leonoff, Richards & Brown v.....	114, 303, 304
Latham, Clarke v.....	561	LePage, Houseman v.....	433
Latimer v. Gaudet.....	128	Lepage, Stewart v.....	174
Latimer v. Hill.....	528	Leroux v. McIntosh.....	592
Latour v. City of Montreal.....	193, 374	Leslie v. Stevenson.....	133, 135, 138
Latour v. Lefebvre.....	334, 524, 574	L'Esperance v. Mollot.....	621
Latourelle, Baikie v.....	564	Lessard v. Simard.....	549
Laurentides Brique et Sable Co. v. Charon.....	22, 389	Lester v. City of Ottawa.....	503
Laurier, Rur. Mun. of, Le Bruyne v.....	657	Le Syndicate de Rosemont v. Gagnon.....	703
Laurin, St. Jean v.....	76	Lethbridge v. Wilson.....	425
Lauzon v. Dominion Stamping Co.....	520	Leushner v. Linden.....	38
Lauzon, Gadbois v.....	63	Levack v. C.P.R. Co.....	455
Lauzon v. Lachapelle.....	53	Levesque, Re; Ex parte Murchie.....	574
Lavere v. Smith's Falls Public Hospital.....	331	Levinson v. Gault & Mackey.....	352, 543
		Levis Ferry, Laflamme v.....	216, 281, 461
		Levis, Town of, Gastonguay v.....	373
		Levis, Town of, Labadie v.....	506
		Levy, Bank of B.N.A. v.....	384, 393
		Lewis, Gillingham v.....	549, 555
		Liboirou v. McCormick.....	190

Lif-Luc.]

COLUMN

Life Assoc. of Scotland, Pennefather v. .	361
Lilja v. Granby Consolidated	462, 518
Lillard, Ronald v.	479, 709
Lincoln Electric L. & P. Co. of St. Catharines v. Hydro-Electric Com. of St. Catharines	500
Linde Canadian Refrigerating Co. v. Sask. Creamery Co.	126, 181
Linden and City of Toronto, Re	184
Linden, Leushner v.	38
Lindsay v. Empey	56
Lines, Rimand v.	275
Lingley v. Gass	421
Linne v. Canadian Order of Foresters	363, 366
Linnenback, Whaley v.	468
Linstead v. Tp. of Whitechurch	325
Lis Pendens, Re	414
Little, Standard Trusts Co. v.	336, 708
Livingston v. Cummings	564
Livingstone v. City of Edmonton	501, 530, 533
Livingstone v. Edmonton Industrial & City of Edmonton	184, 499, 500, 533
Lloyd v. Ashdown	311
Lloyd, Brauchle v.	152, 703
Lloyd, Royal Trust Co. v.	336
Loach, B. C. Electric R. Co. v.	514, 644
Lobel v. Williams	211, 690, 691, 693
Locke, Douglas v.	673
Locke, R. v.	317
Lockwood v. National Surety Co.	385
Locomotive & Machine Co. of Montreal v. Gardiner	29
L'Oeuvre, etc., de St. Jean, Lambert v. .	452
Loggie, The King v.	220
Loiselle, Cloutier v.	416
Londerville, King v.	282
London, City of, Bradish v.	324
London Electric Co., Christie v.	446, 448, 454
London Free Press Co., Govenlock v. . . .	423, 554
London Guarantee & Accident Co. v. Henderson	238, 478
London Jockey Club, O'Neill v.	159
London & Port Stanley R. Co., Hydro-Electric Power Co. v.	575
London Railway Commission, Re	579
London Railway Commission v. Bell Telephone Co.	580
London Scottish Can. Inv. Syndicate v. Davidson	738
Loneragan & Hansford v. Saskatoon Co. .	72
Long Dock Mills Co. v. Dickey	305
Longman v. Cottingham	513
Longworth, Anglo-American Trust Co. v.	710
Loomis v. Abbott	195
Loranger v. Denis Advertising Signs . . .	628
Lord v. Sandwich, Windsor and Amherstburg R. Co.	520
Lorne Park, Re	227
Lortie v. Marien	599
Losier v. Mallay	601, 609
Loveland v. Sale	685
Lovell, Law v.	418
Lowery & Goring v. Booth	718
Lowes, Buxton v.	445, 446
Lucas v. City of Toronto	643
Luczycki v. Spanish River Pulp & Paper Mills Co.	14

Lum-Mal.]

COLUMN

Lumber Mfg. Yards, McRadu v.	596
Lumsden Milling Co., Union Bank v. . . .	483
Lund, Hazel v.	470, 471
Lund v. Vancouver Exhibition Ass'n . . .	148
Lundy v. Knight	701
Luparello, R. v.	398
Lusk v. City of Calgary; Wheatley v. City of Calgary	324
Lutheran Church of Hamilton, Re	594
Luton, Re	293
Luttrell v. Kurtz	29, 195
Lyman's Ltd. v. Gagner	431
M., B. v.	443
M., an Infant, Re	243
"Maagen" The, City of New Westminster v.	6
Maas, Todesco v.	59
MacDonald v. Bank of Vancouver	266
MacDonald, Gaffo v.	445
Macdonald v. Nicholson	24, 184
MacDonald, Park v.	350
MacDonell v. Davies	40
Macey Sign Co. v. Routtenberg	145, 599, 603
MacFarlane, Meredith v.	146
Mack, Re	348
Mack v. Lake Winnipeg Shipping Co.	502, 510
"Mack", S.S., Starke v.	623
Mackay, Re	728
Mackell v. Ottawa Separate School Trustees	125, 614
Mackenzie v. B.C. Electric R. Co. . . .	36, 518, 682
Mackenzie v. City of Toronto	92
MacKenzie v. O'Connell	302
Mackenzie, Mann & Co., Berge v.	430
Mackenzie, Mann & Co., Eastern Trust Co. v.	129, 193, 531, 577, 578
Mackenzie, Mann, & Co. Margach v. . . .	583
Mackenzie, Mann & Co., Melfort Invest. Co. v.	697
Mackenzie, Mann & Co., Viola v.	13
MacKinnon, Big Valley Collieries v. . . .	477
MacKinnon, Jeffress v.	275
MacKinnon, North-West Theatre v. . . .	51, 53
MacNeil, Paterson v.	693
MacTague v. Inland Lines	447
Maddock, Powell v.	538
Mageau, Friedman v.	698, 699
Magrath v. Cook	71
Magrath-Holgate v. Countryman	226, 634
Maheux, Gagnon v.	146, 155
Mahler, Re	236
Mahoney, Lemesurier v.	236
Mahoney, Rose v.	87
Mail Printing Co., Jackes v.	422
Mailloux v. Beaudry	542, 600
Main, Re	340
Mainland Iron Works v. Empire Lumber .	155
Maisonneuve, Town of, v. College Ste. Marie	506, 657
Maitland v. Mathews	211
Major Hill Taxicab Co. & City of Ottawa, Re	180, 193
Major Manuf. Co., Browne v.	89
Makepeace, Union Bank v.	315
Malcolm, Crown Lumber Co. v.	472, 738

Mal-Mat.]	COLUMN	Mat-McF.]	COLUMN
Malcolm, Simpson v.	233, 272, 281, 516	Mathews, Doig v.	161
Malkin Co. v. McGaghran.	182	Mathews, Maitland v.	211
Mallay, Losier v.	601, 609	Mathieson, Harrison v.	334
Mallory, McLaughlin v.	633	Mattair, Curry v.	695
Mallory v. Winnipeg Joint Terminals.	581	Matte v. Matte.	725
Malotte Cream Separator Co. v. Graham.	185	Matthews, Chapin v.	213, 214, 608, 637
Maltais v. Village of Pointe-Au-Pic.	502	Maurice, McDonald v.	552
Manion v. Bertrand.	147, 275	Mauvais v. Tervo.	694
Manitoba Independent Oil, Wilton v.	275, 596	May, R. v.	677, 732
Manitoba Windmill & Pump Co., Sager v.	152, 302	Mayer v. David.	406
Manning v. Bergman.	500	Mayer v. Miller.	392
Manning v. Carrique.	133	Mayhew v. Scott Fruit Co.	601
Manning, R. v.	230	Mayo, Fitzgerald v.	415
Manville, Schrader v.	694, 704, 705	Maytag Co., Ltd., v. Kolb.	565
Manzi, R. v.	205	Mazur, Campbell v.	488
Maple City Oil & Gas Co., Tilbury Gas Co. v.	138	M. Brennen & Sons v. Thompson.	21, 249, 389
Maple Leaf Milling Co. v. Colonial Ass. Co.	362	McAllister v. Defoe.	248
Maple Leaf Portland Cement Co. v. Owen Sound Iron Works Co.	213	McAlpine, Bank of Montreal v.	309
Marceau, R. v.	241	McAra, Thom v.	692
Marchildon, Milot v.	546	McArdle & Davidson v. Howard.	189
Marcil v. Legault.	198, 707	McArthur, Egan v.	721
Margach v. Mackenzie & Mann.	583	McArthur, Swanson v.	387
Margolius, Hamilton v.; Same, Morrison v.	702	McBain, Re.	726
Marien, Lortie v.	599	McBride v. Rusk.	72
Maritime Fish, Royal Fish v.	611	McCallum, Donohue v.	140
Markham Co., Gregoire v.	285	McCallum, Hill & Co. v. Imperial Bank.	404, 405
Marquette, Trudel v.	591, 632	McCallum, Holt Timber v.	34
Marriott v. Martin.	626	McCammon v. Westport Mnf. Co.	175
Marsan, Benjamin v.	490	McCarthy v. City of Hull.	599
Marshall, Armstrong v.	152	McCarthy, Hume v.	230
Marshall v. Dominion Manuf. Ltd.	159	McClain, R. v.	23, 201, 202, 669, 677, 731
Marshall, R. v.	12, 26	McCleane, Re.	725
Marshall-Wells Co. v. Eaton.	368	McClellan, Desautels v.	433
Martel Stewart Co., Denis Advertising Signs v.	207, 271	McClure, Pye v.	145
Martel v. Vigneault.	335	McClymont, McDonald v.	692
Martin v. Cape.	192	McConnell v. Murphy; Patton v. Murphy.	166
Martin & Diemert, Weyburn Security Bank v.	385	McConnell v. Township of Toronto.	396, 596
Martin v. Galibert.	134, 603	McCormack, Liboirou v.	190
Martin v. Grantham.	386	McCormick, Re.	687
Martin International Trap Rock Co., Re.	179	McCowan v. City of Toronto.	490
Martin, Kennedy v.	705	McCready v. International Harvester Co.	115
Martin, Marriott v.	626	McCrimmon v. B.C. Electric R. Co.	350, 428, 717
Martin, Robert v.	234, 290	McCullough, Standard Bank v.	75
Martin, Western Security Bank v.	384	McCune v. Good.	212
Martin, Windsor Auto Sales Agency v.	266, 304	McCurdy, Baker v.	405
Martineau v. Pennington.	485	McDermott v. Fraser.	116, 117, 118, 410, 487
Martineau v. Ravary.	559	McDermott v. Oliver.	306, 351
Marwick v. Kerr.	537	McDonald v. Campbell.	517
Maryland Casualty, Calhoun v.	81	McDonald, Can. Pac. R. Co. v.	456
Masonic Temple Co. & Toronto, Re.	92	McDonald v. Gallagher.	228
Massey-Harris Co. v. Baptiste.	73, 566	McDonald v. Lancaster Separate School Trustees.	616
Massey-Harris Co., Cochlin v.	516	McDonald v. Maurice.	552
Massiah v. C.P.R. Co.	95	McDonald v. McClymont.	692
Massie, Campbellford, L. Ont. etc. R. Co. v.	40	McDonald v. Morgan.	77
Masson Co., The, Browning v.	137, 209	McDonald, Munroe v.	696
Master of Titles, Smith v.	320	McDougall v. McDougall.	675
Mathers, C.J.K.B., Kelly & Sons v.	124, 313, 732	McDougall v. Stephenson; Birch v. Stephenson.	92
Matheson v. Brown.	422	McEwan v. Hesson.	27
		McEwan v. Toronto General Trusts Corp.	292
		McFadden v. Colville Ranching Co.	390
		McFarlane, Rex ex rel., v. Balment.	253

McG-Mea.]	COLUMN
McGaghran, Malkin Co. v.	182
McGale v. Security Storage Co.	714
McGavin, Turner v.	695
McGill, Ewing v.	491
McGill, Rymal v.	539
McGillivray v. Beamish.	310
McGillivray v. Kimber.	622, 623
McGillivray v. O'Toole.	538
McGregor, Curry v.	291
McGuinty v. Hamer.	238
McGuire, Priest v.	438
McIndoo v. Musson Book Co.	157
McInnis v. Public School Board.	150
McInroy, R. v.	128
McIntosh, Leroux v.	592
McIntyre, Armstrong v.	291
McIntyre v. G.T.R. Co.	455
McIntyre v. Prefontaine.	118
McIsaac, McLellan v.	738
McKay v. Good & Rochester.	76
McKenzie, Rex ex rel. Mitchell v.	250, 525
McKeown v. Lechtzier.	404
McKillop, Union Bank v.	161
McKinney v. McLaughlin Carriage Co.	39
McKinnon v. Doran.	136
McKnight Construction Co. v. Van- sickler.	160, 161
McLaughlin, Re.	725
McLaughlin v. Mallory.	633
McLaughlin Carriage Co., McKinney v.	39
McLean, Munic. of Bow Valley v.	654, 657
McLean, Dicarlio v.	627
McLean, Munic. of, v. Southern Alberta Land Co.	655
McLeary, Ex parte; The King v. Dugas.	378
McLellan v. McIssac.	738
McLeod, Brown v.	612
McLeod, Can. Bank of Commerce v.	67
McLeod, Hannigan v.	526, 527
McLeod, Labrosse v.	186
McLeod, Menzies v.	238
McLeod v. Sault Ste. Marie School Board.	145
McLeod, Vogel v.	3
McMath, Sexsmith v.	437
McMillan, Campbell v.	217
McMullen v. Wetlaufer.	437
McMurty v. Bullen.	287
McNeilly v. Bennett.	192
McNiven v. Pigott.	698, 707
McNulty v. Clark.	433
McPhee v. Esquimalt & Nanaimo R. Co.	33, 271, 679
McPhee v. Toronto and Bulmer.	510
McPherson v. Morrison; Rex v. McPherson.	109, 110, 376
McPherson, R. v.	109, 110, 376
McPherson v. U.S. Fidelity & Guaranty Co.	81, 139, 286
McQuaid v. Prudential Trust Co.	232
McQueen, Montgomery v.	156
McRadu v. Lumber Mfg. Yards.	596
McRae, Churchill v.	387, 388, 699
McSorley v. Dominion Coal Co.	450
McSporran v. Miller.	467
McTaggart, Whyte v.	138, 444
McVeity, Journal Printing Co. v.	349, 506
Meaford, Re Arthur & Town of.	373

Mea-Mil.]	COLUMN
Meagher v. Granby Consolidated.	453
Meagher v. Meagher.	726
Mechanical Equipment Co. v. Butler 150, 151	
Medicine Hat, City of, Howson v.; Same, Yuill v.	350
Meehan, Rodier v.	137
Mehner v. Winnipeg Electric Co.	272, 643
Meikle, Ferrie v.	611
Meindl v. Bravender.	711
Melanson v. Gorton Pew Fisheries Co.	624
Meldrum, Schuch v.	551
Melfort Invest. Co. v. Mackenzie, Mann & Co.	697
Melfort, Town of, Smart Hardware & Contracting Co. v.	351
Meloche, Filiatrault v.	388, 528
Ménard v. Choinière.	31, 389
Menard v. Quinlan.	459
Men's Wear Ltd., Re.	172
Menzies v. McLeod.	238
Merchants Bank v. Bury.	70
Merchants Bank v. Guthrie.	566
Merchants Bank v. Hay.	385, 386
Merchants Bank v. Neely, Re.	194
Mercier, Therrien v.	525, 568, 614
Meredith v. MacFarlane.	146
Meriden Britannia Co. v. Walters.	128, 129
Merriam v. Kenderdine Realty Co.	536, 537, 588
Merritt v. St. John R. Co.	463
Messier v. Chenery.	562
Messier v. Lefebvre.	250, 251
Mester, Dochendorff, v.	50
Metals Ltd. v. Trusts & Guarantee Co.	471
Methodist Church of Brock, Rogers Lumber Yards v.	595
Metropolitan Life Ins. Co., Fernand v.	360
Metropolitan Mortgage & Sav. Co., Re.	174
Metzer, Smith v.	310
Meunier v. Laprès.	276, 361
Meyers, R. v.	1
Michaud v. Tremblay.	459
Michie, Shilton Wallbridge & Co. v.	334
Mickelson Drug Co., Mickelson, Shapiro Co. v.	351, 671, 672
Mickelson, Shapiro Co. v. Mickelson Drug Co.	351, 671, 672
Middleditch, Home Investment & Sav- ings Assn. v.	484
Mignault, Bousquet v.	90
Milk Farm Products and Supply Co. v. Buist.	702
Millar v. Patterson.	663
Miller, Blue v.	433, 620
Miller v. Buchan.	489
Miller v. Halifax Power Co.	10, 135, 261, 590, 591, 675, 712
Miller, Hawkins v.	351
Miller, Howard v.	633, 690
Miller v. Kuss.	531, 740
Miller, Mayer v.	392
Miller, McSporran v.	467
Miller, Pomeroy v.	706
Miller, Spencer & Co., Seigman v.	410
Mills v. Harris.	384, 393, 531
Mills v. Porter.	476
Mills v. Tibbetts.	487
Milo Candy Co. v. Browns Ltd.	140
Milot v. Marchildon.	546

Min-Mon.]	COLUMN	Mon-Mow.]	COLUMN
Mining Industry Co. v. Godson Contracting Co.	134	Montreal Tramways Co. v. Crowe.....	396
Minnedosa Power Co., Snyder v.....	551	Montreal Tramways Co. v. Lefebvre....	642
Minnie, Finch v.....	333	Montreal Tramways Co., General Animals Ins. Co. v.....	365
Mishler, Wilson v.....	533	Montreal Tramways Co., Kasaransky v.....	4, 396, 680
Misite v. Toronto, Hamilton & Buffalo R. Co.....	555	Montreal Tramways, etc., Lachine, J.C. &c. R. Co. v.....	127, 257, 576
Missisquoi Lautz v. North.....	80	Montreal Tramways Co., Normandin v.....	518
Mitchell v. Buckner.....	118	Montreal Tramways Co., Orr v.....	215
Mitchell v. G.T.R. Co.....	584, 586	Montreal Tramways Co., Simpchechen v.....	33
Mitchell, Rex ex rel., v. McKenzie.....	250, 525	Montreal Tramways Co., Temple v.....	678, 679, 681, 682
Mitchell, Robin Hood Mills v.....	596	Montreal Trust Co. v. Boggs.....	483, 484
Mitchell v. Sandwich, Windsor, etc., R. Co.....	351	Montreal Trust Co., Carson v.....	175
Mitchell, Wood v.....	564	Montreal Water & Power Co., Bonhomme v.....	206, 571
Mitcheson, Lachine, J.C. etc. R. Co. v.....	219	Moody v. Hawkins.....	239
Mock Sing, Rex ex rel. Johnson v.....	28	Moody v. Murray.....	89
Moffatt, Robinson v.....	347, 700	Moon v. Stephens.....	569
Moirs, Doyle v.....	37, 455, 457	Moore, Re.....	234
Moisse, Re.....	292, 725	Moore v. Allen.....	62
Molison v. Woodlands.....	615	Moore, Appleton v.....	282
Molot, L'Esperance v.....	621	Moore, Re Brotherhood of Railway Trainmen.....	364
Molyneux v. Traill.....	347, 609	Moore, Can. North West. R. Co. v.....	32, 33, 41, 44, 220, 273, 278
Momberg, Jones v.; Re L. Jones.....	20, 187, 596, 720, 722	Moore v. Deal.....	638
Momsen & Rowe, Olympic Stone Construction v.....	79	Moore, O'Brien v.....	136
Monahan, Ex parte; Rex v. Hubbard.....	379, 647, 648	Moore, Sask. Land & Homestead Co. v.....	164, 285, 387
Mond Nickel Co., Clary v.....	233	Moose Jaw, Ocean Accident & Guarantee Corp. v.....	366
Monette, St. Charles v.....	55, 603	Moose Jaw Securities, G.T.P. Development Co.....	414, 416
Monette v. Township of Wright.....	682	Morens v. Board of Investigation.....	718, 719
Montague v. G.T.P. R. Co.....	444, 445	Morgan v. Dominion Permanent Loan Co.....	482
Montarville Land Co., Economic Realty v.....	543	Morgan, Kaine &c. Transportation v.....	22, 233
Montgomery, Boll v.....	683	Morgan, McDonald v.....	77
Montgomery Bros, Rothesay Park Co. v.....	87, 564	Morgan, Watson v.....	737
Montgomery v. The King.....	196, 239	Morin v. Lebel.....	692
Montgomery v. McQueen.....	156	Morin & Thompson, Vick v.....	512, 514
Montgomery, Phillips v.....	83, 516	Morneau v. Bélanger.....	84
Montgomery, Powell v.....	88, 183	Morris, Cromwell v.....	153
Mont Laurier, Village of, v. C.P.R. Co.....	321	Morris, Re Thomas and.....	486
Montmagny, La Ville, La Cie. D'Approvisionnement D'Eau v.....	530, 659, 661	Morrisburg & Ottawa Electric R. Co. v. O'Connor.....	167
Montmorency, Village of, v. Guimont.....	340	Morrisburg, Village of, v. Sharkey.....	138
Montreal & Astec Oil Co., Dubuc v.....	350, 499	Morrison, Davis Acetylene Gas Co. v.....	21, 196, 554, 556
Montreal, City of, Can. North. Que. R. Co. v.....	576	Morrison v. Margolius; Hamilton v. Margolius.....	702
Montreal, City of, Del Sole v.....	429, 501	Morrison, McPherson v.....	376
Montreal, City of, Desaulniers v.....	494	Morrison, Pure Canadian Silver Black Fox Co. v.....	164
Montreal, City of, Deschamps v.....	502	Morrow, Re.....	723
Montreal, City of, v. Dionne.....	505	Morrow, R. v.....	35, 345, 397
Montreal, City of, v. Gamache.....	323, 326, 678	Mortgage Consideration, Re.....	413
Montreal, City of, Gaudreau v.....	503	Morton, Re.....	724
Montreal, City of, Latour v.....	193, 374	Mosely, Crossman v.....	58
Montreal, City of, Payette v.....	502	Moses v. French.....	630
Montreal, City of, Riopelle v.....	22	Moses, Leeson v.....	539
Montreal, City of, Robertson v.....	497	Motor Street Cleaning Co., Re.....	179
Montreal, City of, Spedding v.....	504	Mott, Re; Paysant v. Forrest.....	727
Montreal Gas Co., Lachine, J.C. & M.R. Co. v.....	256	Mountain Lumber Manuf. Ass'n v. C.P.R. Co.....	102
Montreal, Harris Construction Co. v.....	507	Mowat v. Dominion Trust Co.....	172
Montreal Invest., etc., Co. v. Sarault.....	282, 702		
Montreal Light, Heat & Power Co. v. Chambly Basin.....	388, 655		
Montreal Street R. Co. v. Chevandier.....	95, 225		

Mow-New.]	COLUMN	New-Oly.]	COLUMN
Mowatt v. Goodall.....	182, 355	New Westminster, City of, v. The "Maagen".....	6
Moyer, Bloch v.....	513	New York & Pennsylvania Co. v. The Holgevac.....	181
Msadaquis, Ex parte.....	318	Nicholson & C.O.F., Re.....	68
Mulholland & Van den Berg, Re.....	721	Nicholson, Macdonald v.....	24, 184
Mullen Coal Co., Taylor v.....	218	Nicholson, Sargent v.....	133
Municipality of (Indexed under name).....		Nickerson, Nixon v.....	299
Munns, Polson Iron Works v.....	124	Nicoll v. Canadian Bank of Commerce.....	420
Munroe v. McDonald.....	696	Nier, R. v.....	544
Murchie, Ex parte; Rex v. Gloucester.....	111, 377, 526	Nimchonok, R. v.....	668
Murchie, Ex parte; Re Levesque.....	574	Nisbet v. Tappe.....	535
Murdock, Haug Bros. v.....	603, 605	Nixon v. Nickerson.....	299
Murdock v. Kilgour.....	372	Noel v. Brunet.....	144
Murk, Harris v.....	77	Noel v. Quebec R., L. H. & P. Co.....	514, 584
Murphy, McConnell v.; Same, Patton v.....	166	Nolin v. Gosselin.....	321
Murray, Re.....	724	Norfolk v. Roberts.....	505, 530
Murray & Mahoney, R. v.....	201	Normandeau, Jacques v.....	712
Murray, Moody v.....	89	Normandin v. Montreal Tramways Co.....	518
Murray, Street v.....	153	Norquay v. G.T.P. Town & Dev. Co.....	160, 212
Musson Book Co., McIndoo v.....	157	North American Lumber Co., Brown v.....	737
Mutual Ins. Co., Champigny v.....	364	North Atlantic Trading Co. v. The King.....	197
Mutual Life Ins. Co., Devitt v.....	357, 360	North Bay, C.N.R. Co. v.....	260, 575
Myatt, Connors v.....	11	North Bay, Town of, Edwards v.....	326
Myers v. Teller.....	13	North, Missisquoi Laus v.....	80
Myhra & Elliott, Re.....	440	North Norfolk, Rur. Mun., Thorsteinson v.....	503
Nadon, National Trust Co. v.....	51, 52	Northern Electric & Manuf. Co., Hughes v.....	159
Nagrella Manuf. Co., Re.....	172	Northern Elevators v. Western Jobbers.....	62
Naiman v. Wright.....	386, 487	Northwest Employment Agency v. Putnick.....	538, 543
Nakata v. Dominion Fire Ins. Co.....	356, 357, 358, 365	North-West Theatre v. MacKinnon.....	51, 53
Nash, R. v.....	544	North Wyoming v. Butler.....	181
National Amusement Co., Barnswell v.....	16	Norton v. Kennealy.....	77
National Elevator Co., Stephan v.....	514	Nova Scotia Fire Ins. Co., Bruce v.....	186
National Mortgage Co. v. Rolston.....	467, 593	Nova Scotia Steel & Coal Co., Campbell v.....	584
National Paper Co., Whyte v.....	563	Norwalk Mining Co., Re.....	173
National Surety Co., Lockwood v.....	385	Nussbaum, Bateman v.....	168
National Trust Co., Dandy v.....	292		
National Trust Co., Gray v.....	442		
National Trust Co. v. Nadon.....	51, 52		
National Trust Co., Roberts v.....	290		
National Trust v. Stancul.....	329		
Naud, Girard v.....	457		
Neal, Re Barr Registers v.....	519		
Neal Institute, Laferrière v.....	154		
Neely, Re, Merchants Bank v.....	194		
Neely's Limited v. Dredge.....	396		
Nelson v. Baird.....	86, 211		
Nelson, Farb v.....	290		
Nelson v. Gagnon.....	703		
Nelson, Hearn v.....	25, 516, 583		
Nepage v. Pinner.....	470		
Nepisiquit Real Estate, etc., Co. v. Can. Iron Corp.....	350, 476, 718		
Nerlich, R. v.....	343		
Nesbitt, Barker v.....	607		
Nesom, Hammond v.....	313		
Newberry v. Brown.....	136, 277		
New Brunswick Construction Co., Ross v.....	478		
New Brunswick, etc., R. Co., Wentzell v.....	282, 453, 461		
New Glasgow, Town of, Pictou v.....	228		
Newman's Case; Re Sovereign Bank.....	175		
Newsom, Oshawa Lands v.....	151		
Newton v. Bauthier.....	28		
New Toronto, Village of, Curley v.....	145		
New Westminster, Re, C.N.P.R. Co.....	656		
		Oakville, Town of, Till v.....	156, 283
		O'Brien v. Brennan.....	15
		O'Brien, Caldarelli v.....	446
		O'Brien v. Moore.....	136
		O'Brien, R. v., Ex parte Doucet.....	110
		O'Brien, Rainboth v.....	140, 150, 275
		Ocean Accident & Guarantee Corp. v. Moose Jaw.....	366
		O'Connell, MacKenzie v.....	302
		O'Connell, Porter v.....	516, 638, 678
		O'Connor & Hamilton Provident, Re.....	491
		O'Connor, Morrisburg & Ottawa Electric R. Co. v.....	167
		Octeau, Richards v.....	402
		O'Donnell, Barnaby v.....	291
		Ogden Ltd. v. Can. Expansion Bolt Co.....	284, 672
		O'Hearn v. Friedman.....	711
		Oke v. Oke.....	552
		O'Leary v. Ferguson.....	305
		Oliver, Re.....	728
		Oliver, McDermott v.....	306, 351
		Oliver-Serim Lumber Co. v. C.P. & E. & N.R. Cos.....	102, 575
		Olsen v. Goodwin; Branson v. Goodwin.....	433
		Olsen, Rollefson Bros. v.....	409
		Olympia Co., Re.....	51, 178, 189

Oly-Ozi.]	COLUMN
Olympic Stone Construction v. Momsen & Rowe.....	79
Oma, R. v.....	14, 15
O'Meara, Re.....	728
O'Meara, R. v.....	308
O'Mullin v. Eastern Trust Co.....	261
O'Neill v. London Jockey Club.....	159
Ontario Cannors, Re Badder v.....	194
Ontario Fire Ins., Re.....	164, 176
Ontario Gravel Freighting Co. v. "A. L. Smith" and "Chinook".....	7, 120
Ontario Gravel Freighting Co., "A. L. Smith" and "Chinook" v.....	6, 8, 623
Ontario & Minnesota Power Co. & Fort Frances, Re.....	25, 661, 662
Ontario & Minnesota Power Co., Town of Fort Frances, v.....	639
Ontario Power Co., Stamford v.....	616
Ontario Wind Engine v. Bunn.....	209, 560
Orchard v. Dykeman.....	534
Order of Can. Home Circles, Grainger v.....	68
Orenstein v. Smith.....	84
Ormiston v. Ullerich.....	553
Orr Brothers, Canada Sand Lime Co. v.....	607
Orr v. Montreal Tramways Co.....	215
Orr v. Robertson.....	407, 466
Ortenberg v. Plamondon.....	420
Osborne and Hudsons Bay Co., Re.....	602
Oshawa Lands v. Newsom.....	151
O'Shea v. Hague.....	431
Osterhout and Cada, Re.....	483
Ostigny v. Savignac.....	429, 539
Ostrander Estate, Re.....	123, 195
Otis' Caveat, Re.....	188
Otis v. Otis.....	638
O'Toole v. Brandram-Henderson.....	458
O'Toole, McGillivray v.....	538
Ottawa, City of, Grills v.....	326
Ottawa, City of, Lester v.....	503
Ottawa, City of, Re Major Hill Taxicab Co. &.....	180, 193
Ottawa, City of, Ottawa Separate School Trustees v.; Quebec Bank, Same v.....	126, 287
Ottawa, City of, Twin City Ice Co. v.....	719
Ottawa's Claim, City of; Re Faulkner Ltd.....	178
Ottawa Electric R. Co., Hayes v.....	644
Ottawa Forwarding Co. v. Ward.....	99
Ottawa & New York R. Co. and Tp. of Cornwall, Re.....	660, 716
Ottawa Separate School Trustees, Mackell v.....	125, 614
Ottawa Separate School Trustees v. City of Ottawa; Same v. Quebec Bank.....	126, 287
Ottawa Separate School Trustees v. Quebec Bank; Same v. City of Ottawa.....	126, 287
Ouellet v. Jalbert.....	11
Overseers of the Poor v. Kennedy.....	67
Owen Sound Iron Works Co., Maple Leaf Portland Cement Co. v.....	213
Owen Sound Local Option By-law, Re.....	373
Owen Sound Lumber Co., Re.....	165
Oxford Knitting Co., Johnson v.....	540
Ozias v. C.P.R. Co.....	106
Ozias, Saulsberry v.....	700

Pac-Pel.]	COLUMN
Pacific Great East R. Co. v. Larsen.....	221, 261
Pacific Slope Lumber & Greer, Coyle Cos., Prembo v.....	434
Pacific Stevedoring & Contracting Co., Atkinson v.....	463
Page, Re.....	730
Page v. Page.....	548, 554
Page, Harrison v. Peverett.....	356
Painchaud, Brunet v.....	60
Paitson v. Rowan.....	185
Palangio v. Augustino.....	304
Palfrey v. Brown.....	472
Pall Sigurdson, Re.....	67, 568
Palmer, R. v.....	375, 650
Palter v. Sher.....	487
Panneton v. Gagnon.....	294
Paquet, Collector of Revenue v.....	636
Paquet v. Plante.....	498
Paquet Co., Lavigueur v.....	419
Paquette, Bruneau v.....	290
Paquin v. School Com'rs of Ste. Genevieve.....	615
Paradis, Association of Architects v.....	45, 636
Paradis, Burroughs v.....	24
Paradis, Richardson v.....	716
Paré v. Warwick Pants Manuf. Co.....	409
Parent, Can. Pac. R. Co.....	99, 122, 223, 224
Park v. MacDonald.....	350
Parker v. Capital Life Ass. Co.....	362
Parker, Capital Life Ass. Co. v.....	362
Parker v. Holloway.....	739
Parker, Homewood Sanitarium v.....	334
Parker, Vaughan v.....	244
Parkhurst v. Grant Smith & Co.....	447
Parks, Avery & Son v.....	118
Parks v. Simpson.....	391
Parry v. Rur. Mun. of Sherwood.....	658
Parsons v. Tp. of Eastnor.....	41
Parsons Realty Co., Cooper v.....	562
Paskwan, Toronto Power Co. v.....	449
Paterson v. Gross.....	488
Paterson v. MacNeil.....	693
Patillo v. Cummings.....	595
Patterson v. Hodges & Rowe.....	30, 130
Patterson, Millar v.....	663
Patterson v. Wurm.....	485
Patton v. Murphy; McConnell v. Murphy.....	166
Paul v. Cousineau.....	405
Paulin, Ex parte; The King v. Dugas.....	380
Paulson, R. v.....	477
Pauzé v. Doucet.....	45
Pawliski, R. v.....	344
Payette v. City of Montreal.....	502
Payne & Union Bank, Re.....	54
Payzant Memorial Hospital, Re; The King v. Roach.....	439
Peacock, Re.....	234
Peacock v. Wilkinson.....	86, 562
Pearce, Bennett v.....	538
Pearce v. City of Calgary.....	19, 658, 659, 664
Pearlman v. Great West Life.....	355
Peart Bros. Hardware Co. v. Battell.....	464, 468
Pedlar v. Ryder.....	691
Peebles, Pioneer Tractor Co. v.....	168
Pegg, Craig v.....	710
Peirson v. Crystal Ice Co.....	273
Péladeau, Rosconi v.....	420
Pélissier v. Houle.....	626

Pel-Pip.]	COLUMN
Pelletier, Dudemaine v.....	86
Pelletier v. Lachance.....	460
Péloquin v. Clermont.....	387, 620
Péloquin, Shipman v.....	91
Peltier, Hawkshaw v.....	187
Pencis v. Girard.....	459
Peninsular Tug & Towing Co. v. The "Stephie".....	7, 613
Pennefather v. Life Assoc. of Scotland...	361
Pennington, Martineau v.....	485
Pennoyer Co. v. Williams Machinery Co.....	74, 77
People's Home Co., Channel v.....	418
Pepin v. G.T.R. Co.....	460
Peppiatt v. Peppiatt.....	125, 442
Peppiatt v. Reeder.....	189, 215, 352, 611
Perkins, Can. Bank of Commerce, v.....	553
Perkins, R. v.....	345
Perkus, Corby v.....	475
Pérodeau v. Richard.....	507, 526
Perras, Temple Baptist Church v.....	474
Perrault v. Breitman.....	628
Perrault, C.N.O.R. Co. v.....	219
Perrin v. Antlers Realty Co.....	189
Perron v. Security Life Ins. Co.....	629
Perron v. Senecal.....	204
Persofsky v. Finkelstein.....	607
Perth, County of, Ackersviller v.....	322, 323
Perth, County of, Tp. of Euphrasia v.....	322
Pesant v. Garrett.....	88
Pescovitch v. Western Canada Flour Mills.....	517
Peszeniczny v. C.N.R. Co.....	430
Peterborough Electric Light Co., Re City of Peterborough &.....	43
Peterborough & Peterborough Electric Light Co., Re City of.....	43
Peterson, C. N. R. Co. v.....	712
Peterson v. Garth Co.....	460
Peverett, Page, Harrison v.....	356
Pfaffenroth, Rohl v.....	469, 595
Pharmaceutique Ass'n of Quebec v. Bergeron.....	245
Phelan v. G.T.P.R. Co.....	452
Phillips, Barrett v.....	273
Phillips, Can. Land Invest. Co. v.....	192
Phillips v. Montgomery.....	83, 516
Phillips and Whitla, Re.....	627, 629
Phipps v. Freeland.....	601
Picard v. Picard.....	234, 283, 316
Piche, Joly v.....	346
Picton Board of Trade v. C.N.O.R. Co.....	96
Pictou v. Town of New Glasgow.....	228
Pierreville, Village of, v. Bell Telephone Co.....	506
Piggott v. Jupp.....	564
Pigott, McNiven v.....	698, 707
Pilkington Bros., City of Toronto v.....	92
Pilon v. City of Lachine.....	20, 374
Pinner, Nepage v.....	470
Pinsonneault, Re.....	363
Pinx v. Grouch.....	150
Pioneer Bank v. Can. Bank of Com- merce.....	66
Pioneer Tractor Co. v. Peebles.....	168
Piper, Britsch v.....	588
Pipestone, Reid v.....	148
Pipestone, Rur. Mun. of, Turnbull v.	39, 40, 41

Pla-Pur.]	COLUMN
Plainview Farming Case, Re; Trans- continental Townsite Co.....	173, 186
Plainview Farming Co. v. Transcon- tinental Townsite Co.....	192, 532, 700
Plamondon, Ortenberg v.....	420
Plante, Paquet v.....	498
Plaunt, Severt v.....	571
Plourde, Collector of Revenue v.....	378
Plumb, Re.....	336
Pointe-Au-Pic, Village of, Maltais v.....	502
Poirier v. Archambault.....	139, 691, 692, 694
Poirier, Lareau v.....	139
Poizner v. Cottier.....	215
Polgreen, Re Roland.....	340, 414
Pollock, Berliner Gramophone Co. v.....	37
Polson Iron Works v. Munns.....	124
Pomeroy v. Miller.....	706
Pon Yin v. City of Edmonton.....	46, 296, 503
Port Arthur Waggon Co., Re.....	171
Port Arthur & Fort William Boards of Trade v. C.P.R. Co.....	105
Porte, Jadis v.....	276
Porter Art & Music Store, Re.....	158
Porter, Killops v.....	240
Porter v. O'Connell.....	516, 638, 678
Porter, Mills v.....	476
Porter, S.S., Lannon v.....	622
Poucher v. Wilkins.....	287
Poulin, Du Tremble v.....	16
Powell v. Crow's Nest Pass Coal Co.,	459, 463
Powell v. Maddock.....	538
Powell Lumber v. Gilday.....	469
Powell Lumber Co. v. Hartley.....	469, 473
Powell v. Montgomery.....	88, 183
Powell River Paper Co., Hatch v.....	448
Powell, Simmons v.....	246
Power of Attorney, Re.....	413
Power, Security Life Ins. Co. v.....	360, 678
Powley, Gale v.....	532, 551, 707, 708, 740
Pratt v. Idsardi.....	214, 445
Prefontaine, McIntyre v.....	118
Prembo v. Pacific Slope Lumber & Greer Coyle Cos.....	434
Premier Oil Co. v. Lavigne.....	143
Preston v. Adilman.....	696
Prevost v. Bédard.....	36, 161, 227, 355
Price v. Chicoutimi Pulp Co.....	421, 422
Price v. Forbes.....	148
Price v. International Harvester Co.....	222
Price, Lachance v.....	371
Priel, Saskatoon Hardware Co. v.....	309
Priest v. McGuire.....	438
Providence, Washington, Ins. Co., Bacon v.....	356, 551
Provincial Fire Ins. Co., Evangeline Fruit Co. v.....	359
Provincial Fire Ins. Co., Siegler v.....	359
Provincial Fox v. Tennant.....	133, 136
Prudential Trust Co., McQuaid v.....	232
Pryce Jones, Duncan & Buchanan v.....	560, 603
Public School Board, McInnis v.....	150
Publishers Assn. v. Rowland.....	601
Publicover, R. v.....	377, 380
Pugsley, Ex parte; The King v. Jonah.....	107
Puley, Re.....	724
Pulford v. Burmeister.....	33
Pulleyblank, Stumpf v.....	446
Pure Canadian Silver Black Fox Co. v. Morrison.....	164

Pur-Reg.]	COLUMN	Rei-Rex.]	COLUMN
Pure Milk Corp., R. v.	498	Reid & Gooderham, Re.	415
Purtell, Chapman v.	480	Reid v. Pipestone.	148
Purvis, Crossman v.	185	Rekert, St. Pierre v.	183, 467
Purvis v. Shepherd.	404	Rendall, Mackay, Michie v. Warren & Dyett.	464, 468, 471
Putnick v. Henry.	392	Renner, Gates v.	22, 26, 30
Putnick, Northwest Employment Agen- cy v.	538, 543	Reo Sales Co. v. G.T.R. Co.	98
Pye v. McClure.	145	Restigouche, Mun. of, The King v.; Ex p. Murchie.	525
Pyke v. Sovereign Bank.	74, 283	Revelstoke Saw Mill Co. v. Alberta Bottle Co.	470, 473, 474, 475
Quaker Oats Co. v. Denis.	123, 430, 538	Revelstoke Saw Mill Co. v. Fawcett.	73
Quaker Oats Co., Russell v.	115	Revillon v. Whalen.	305
Quebec Bank v. Kohn.	182	Rex v. Aikens.	111, 647
Quebec Central R. Co., Dodier v.	581	Rex v. Aitcheson.	59, 496
Quebec County Realty Co. v. Tcharos.	711	Rex v. Batterman.	24, 677
Quebec Development Co. v. Rousseau.	19	Rex v. Beaulieu.	677
Quebec, Jacques-Cartier Electric Co. v. The King.	184, 369	Rex v. Belyea.	28, 46, 47
Quebec & L. St. John R. Co., Brown v.	105	Rex v. Book.	318, 650
Quebec R., L. H. & P. Co., Lamontagne v.	509, 636	Rex v. Borror.	425
Quebec R., L. H. & P. Co., Noel v.	514, 584	Rex v. Burgess.	205
Quebec R.L.H. & P. Co. v. Vandry	255, 365, 509	Rex v. Bythell.	123
Quevillon, St. Denis v.	402	Rex v. C.P.R. Co.	497
Quinlan, Menard v.	459	Rex v. Coady.	399
Rabinovitch & Clingman, R. v.	618, 733	Rex v. Cohen.	297
Raffan v. Canadian West. Natural Gas etc., Co.	311	Rex v. Colton.	375
Railway Centre Park Co., Babineau v.	694	Rex v. Curry.	346, 648
Rainboth v. O'Brien.	140, 150, 275	Rex v. Dalke.	330
Ramsay v. Board of School Trustees.	148	Rex v. Davis.	61
Ramsay v. West Vancouver.	260	Rex v. De Mesquito.	35, 280
Ramsay v. Westwood & U.S. Fidelity & Guaranty Co.	50	Rex v. Dhana Singh.	740
Randall, Gee & Mitchell v. C.N.R. Co.	97, 265	Rex v. Dickey.	108, 379, 651
Rankin v. Vokes.	552	Rex v. Evans; Re Fisher.	129
Raper, etc. Burial Co., Washington & Johnson v.	552	Rex v. Felton.	618
Rat Portage Lumber Co., U.S. Construc- tion Co. v.	466	Rex v. Fitzpatrick.	206
Ravary, Martineau v.	559	Rex v. Foley.	204
Ray v. Gettas.	536	Rex v. Frain.	617
Raymond, Rousseau v.	121	Rex v. Gentile.	61
Raynor, Toronto Power Co., v.	448	Rex v. Georgett (No. 2); Fauchaux v. Georgett.	26, 108, 110
Raynor v. Toronto Power Co.	447	Rex v. Gloucester; Ex parte Murchie	111, 377, 526
Real Cake Cone Co. v. Robinson.	129	Rex v. Graham.	280
Read, Cole v.	145, 626	Rex v. Hauberg.	281, 619
Real Property Act, Re.	480	Rex v. Haynes.	681
Réaume v. City of Windsor.	28, 321	Rex v. Henry.	318
Réaume v. Coté.	10	Rex v. Hewa.	61
Receiver-Gen'l of New Brunswick v. Rosborough.	665	Rex v. Himmelspach.	378
Reeder, Peppiatt v.	189, 215, 352, 611	Rex v. Hoare.	38, 111, 378, 380
Reeder, Shearer v.	3	Rex v. Hogg.	85
Reeder, Soboloff v.	697	Rex v. Holowaskawe; Rex v. Croft.	644
Regina, City of, Armour v.	322, 502	Rex v. Howe.	23, 202, 204
Regina, City of, Schell v.	289, 452, 515	Rex v. Hryeziuk.	668
Regina, City of, United Motor Co. v.	237	Rex v. Hudson's Bay Co.	435
Regina, City of, Western Trust Co. v.	454	Rex v. Hutton.	667
Regina Public School v. Gratton Sep- arate School.	616	Rex v. Inkster.	35, 282
Registration of a Caveat, Re.	415	Rex v. Jack.	399, 568
Registration of a Mortgage, Re.	413	Rex v. Jagat Singh.	331, 681
Registration of Plans, Re.	416	Rex v. James.	203, 205, 342, 343
Registration of Transfer of Mortgage, Re	413	Rex v. Jennie Hawkes.	200, 231
		Rex v. Jousseau.	343
		Rex v. Judge.	545
		Rex v. Kong.	279
		Rex v. Kuzin.	731
		Rex v. Kwong Yick Tai.	22, 195
		Rex v. Lachance.	47, 344, 345
		Rex v. Law.	399, 648
		Rex v. Locke.	317
		Rex v. Luparello.	398

Rex-Rex.]	COLUMN
Rex v. Manning	230
Rex v. Manzi	205
Rex v. Marceau	241
Rex v. Marshall	12, 26
Rex v. May	677, 732
Rex v. McClain	23, 201, 202, 669, 677, 731
Rex v. McInroy; Re Whiteside	128
Rex v. McPherson; McPherson v. Morrison	109, 110, 376
Rex v. Meyers	1
Rex v. Morrow	35, 345, 397
Rex v. Murray & Mahoney	201
Rex v. Nash	544
Rex v. Nerlich	343
Rex v. Nier	544
Rex v. Nimchonok	668
Rex v. O'Brien; Ex parte Doucet	110
Rex v. Oma	14, 15
Rex v. O'Meara	308
Rex v. Palmer	375, 650
Rex v. Paulson	477
Rex v. Pawliski	344
Rex v. Perkins	345
Rex v. Publicover	377, 380
Rex v. Pure Milk Corp.	498
Rex v. Rabinovitch and Clingman	618, 733
Rex v. Rispa	233
Rex v. Romer; R. v. Johnson; R. v. Farrell	202, 203, 637, 649
Rex v. Rousseau	649
Rex v. Rowluk	206
Rex v. Sam Jon	94, 198
Rex v. Sands	240
Rex v. Scaynetti	107, 376
Rex v. Schilling; Cowan v. Schilling	111, 229, 650, 651
Rex v. Simuluk	377
Rex v. Sinkolo	380
Rex v. Snyder	200, 673, 674
Rex v. Spera	619
Rex v. Sperrakes	205, 669
Rex v. Spray	618
Rex v. Steeves; Ex parte Gogan	109, 381
Rex v. Steeves; Ex parte Richard	112, 318, 375, 647, 649, 650
Rex v. Strong	8, 9, 201, 676
Rex v. Stubbs	307
Rex v. Studdard	331
Rex v. Tally	130, 342, 344, 399, 646, 651, 676
Rex v. Thompson	381
Rex v. Thornton	20
Rex v. Titchmarsh	108, 196
Rex v. Toronto R. Co.	520, 521, 522
Rex v. Upton	200
Rex v. Van Horst	279
Rex v. Wallace	279, 344, 669
Rex v. Weiss	342, 638
Rex v. West	522
Rex v. White	204, 206
Rex v. Willis	373
Rex v. Wilson	203
Rex v. World Newspaper Co.	652
Rex v. Wright	379
Rex ex rel. Boyce v. Ellis	19
Rex ex rel. Johnson v. Mock Sing	28
Rex ex rel. La Fleche v. Sheppard	251, 499, 501, 523, 524
Rex ex rel. McFarlane v. Balment	253
Rex ex rel. Mitchell v. McKenzie	250, 525

Rex-Roc.]	COLUMN
Rex ex rel. Yates v. Lawrence	251
Reyneurt v. Van Walleghen	603
Reynolds v. Can. Light & Power Co.	456
Reynolds, Gilbert v.	489, 490
Reynolds, Hassan v.	299
Reynolds v. City of Windsor	520
Richard, Ex parte; Rex v. Steeves	112, 318, 375, 647, 649, 650
Richard, Pérodeau v.	507, 526
Richards, Adam v.	419
Richards & Brown v. Leonoff	114, 303, 304
Richards v. Oceau	402
Richardson, Re	346
Richardson, Re; Garnham, Re	498
Richardson v. Allen	38
Richardson v. Beamish	144
Richardson v. C.P.R. Co.	97
Richardson v. Paradis	716
Richer v. Horlick	593
Richman v. Brandon	535
Ridge v. M. Brennen & Sons	247
Ridgeway Park, Abbott v.	700
Rimand v. Lines	275
Riopelle v. City of Montreal	22
Rioux, Cromwell v.	519
Rioux v. Village of Temiscouata	671
Ripley v. Vellie	72
Rispa, R. v.	233
Ritchie Contracting Co., Atty-Genl. of Can. v.	319
Ritchie Contracting Co. v. Brown	18, 117
Ritchie v. Jeffrey	49
Ritchie, Toronto General Trusts Co. v.	490
Rivard v. Parish of Wickham West	193, 659
Riverside Lumber Co. v. Calgary Water Power Co.	718
Rivet v. Antil	134, 222
Roach, The King v.; Re Paysant Memorial Hospital	439
Roaf v. G.T.P. Town & Development Co.	414, 416
Roberge v. Sylvestre	337
Robert, Dorion v.	333
Robert v. Martin	234, 290
Roberts v. C.P.R. Co.	104
Roberts v. Daniels	185
Roberts v. National Trust Co.	290
Roberts, Norfolk v.	505, 530
Robertson v. City of Montreal	497
Robertson, Bellamy v.	84
Robertson, Orr v.	407, 466
Robertson v. Wilson	305, 550
Robillard v. Sloan	525, 526
Robillard, Vanasse v.	689
Robinet, Clarke v.	239
Robin Hood Mills v. Mitchell	596
Robins, Re	729
Robins Ltd., Goodrich Co. v.	563
Robinson v. Burnaby	148
Robinson v. Campbell	327
Robinson v. Ellis	565
Robinson, G.T.R. Co. v.	99, 101
Robinson v. Haley	680, 682, 732
Robinson, Little & Co. v. Tp. of Dereham	325
Robinson v. Moffatt	347, 700
Robinson, Real Cake Cone Co. v.	129
Roch v. Joron	91
Roche, Johnson v.	209

Rod-Rud.]	COLUMN	Run-Sar.]	COLUMN
Rodier v. Meehan.....	137	Rundle, Re.....	20
Rogers, Re.....	328, 412	Rural Mun. of Fertile Belt, Re.....	719
Rogers v. City of Toronto.....	499	Rushworth v. Johnston.....	565
Rogers v. Wylie.....	611	Rusk, McBride v.....	72
Rogers Lumber Yards v. Methodist Church of Brock.....	595	Russell, Re.....	726
Rohl v. Pfaffenroth.....	469, 595	Russell, Constable v.....	683
Roland Polgreen, Re.....	340, 414	Russell v. Quaker Oats Co.....	115
Rollefson Bros. v. Olson.....	409	Rutherford, Re.....	292
Rolph & Clark Ltd. v. Goldman.....	134	Rutherford, K. & S. Auto Tire Co. v.....	315
Rolph v. Villeneuve.....	607	Rutherford v. Taylor.....	385
Rolston, National Mortgage Co. v.....	467, 593	Ryckman, Foster v.....	238
Rolt v. Griese & Wood.....	703	Ryder, Pedlar v.....	691
Romano, The King v.....	34, 679	Rydstrom v. Krom.....	13
Romer, R. v.....	202, 203, 637, 649	Rymal v. McGill.....	539
Ronald v. Lillard.....	479, 709	Ryser v. Ryser.....	346
Roray v. Howe Sound.....	163	Sager v. Man. Windmill Co.....	152, 302
Rosborough, Receiver-Gen'l of N.B. v.....	665	Saindon v. The King.....	215, 224, 430
Roseconi v. Peladeau.....	420	St. Alice, The, Cowan v.....	617
Rose, Hancock v.....	392	St. Charles v. Monette.....	55, 606
Rose v. Mahoney.....	87	St. Croix Paper Co., Clark v.....	31
Rose v. Rose.....	685, 687	St. Denis v. Quevillon.....	402
Rose, Willett v.....	560	St. Denis, Village of, Chaput v.....	424
Rose & Hamilton, Grimsby & Beams-ville R. Co., Re.....	575	St. James Ltd., Westholme Lumber Co. v.....	142
Ross, Hanson v.....	518, 519	St. Jean v. Laurin.....	76
Ross, Healy v.....	245	St. John v. Board of Valuers.....	656, 660
Ross v. New Brunswick Construction Co.....	478	St. John, City of, Howard v.....	354
Ross, Scrim Lumber Co. v.....	77	St. John, City of, St. John R. Co. v. 24,	641
Rosthern, Can. North. Express Co. v.; Same, Can. North. Telegraph v.....	660, 663, 664	St. John & Quebec R. Co. v. Anderson.....	40
Rosthern Election Petition, Re.....	250	St. John & Quebec R. Co. v. Fraser Ltd.....	27, 34, 218
Rothsay Park Co. v. Montgomery Bros.....	87, 564	St. John & Quebec R. Co. v. Hibbard Co.....	578
Roubert, Campbell v.....	479	St. John & Quebec R. Co., Turney v.....	43
Roundy v. Salinas.....	394	St. John R. Co. v. City of St. John 24,	641
Rourke, Re.....	339, 340	St. John R. Co., Merritt v.....	463
Rourke, Concrete Appliances Co. v.....	541	St. Lawrence Furniture Co. v. Binet.....	165
Rousseau v. Heirs of A. J. Dubuc.....	612	St. Mary's Young Men's Society, Herschorn v.....	406
Rousseau, Quebec Development Co. v.....	19	St. Maurice Sand Co. v. Brault.....	50
Rousseau, R. v.....	649	St. Onge, Ex parte Beloni,.....	109
Rousseau v. Raymond.....	121	St. Pierre v. Girard.....	4
Rousseau, Simard v.....	401	St. Pierre v. Rekert.....	183, 467
Routhier v. L'Alliance Nationale.....	68	St. Pierre of Verone, Corp. of, Lamothe v.....	502
Routtenberg, Macey Sign Co. v.....	145, 599, 603	St. Roch Hotel Co. v. Barbeau.....	171, 277
Rowan, Paitson v.....	185	St. Roch Hotel, Brasserie Champlain v.....	602
Rowland v. City of Edmonton.....	226	Ste. Rose, Village de, Desjardins v.....	19
Rowland, Publishers Ass'n v.....	601	Salaberry, City of, Bourassa v.....	249
Rowluk, R. v.....	206	Sale, Loveland v.....	685
Roy v. Barbeau.....	145	Salinas, Roundy v.....	394
Roy v. Can. Passenger Ass'n.....	105	Sam Jon, R. v.....	94, 198
Roy v. Fortin.....	52, 294	Samson v. Larochelle.....	10
Roy v. La Caisse des Familles.....	163	Sanders v. Hedman.....	304
Roy, Veilleux v.....	230	Sanderson, Re.....	728
Royal Bank v. Ball & Whieldon.....	66, 114, 115	Sands, R. v.....	240
Royal Bank, Cameron v.....	64	Sandwich, Windsor & Amherstburg R. Co., Curry v.....	642
Royal Bank v. Hickney.....	75	Sandwich, Windsor & Amherstburg R. Co., Keech v.....	511
Royal Bank v. Lee & Girard.....	37, 309, 492	Sandwich, Windsor & Amherstburg Co., Lord v.....	520
Royal Fish v. Maritime Fish.....	611	Sandwich, Windsor & Amherstburg R. Co., Mitchell v.....	351
Royal Paper Box Co. v. Canada Cement Construction Co.....	175	Sandwich, Windsor & Amherstburg R. Co., Seguin v.....	642
Royal Trust v. Holden.....	621	Saraguay Electric & Water Co., Audet v.....	208
Royal Trust Co. v. Keating.....	410		
Royal Trust Co. v. Lloyd.....	336		
Royce Ave. Crossing (Toronto), Re.....	585		
Ruddy & Toronto Eastern R. Co., Re.....	220		
Rudolph v. Continental Life Ins. Co.....	364		
Rudyk v. Shandro. 215, 250, 437, 438, 559, 678			

Sar-Sev.]	COLUMN
Sarault, Montreal Invest., etc., Co. v.	282, 702
Sargent v. Nicholson.....	133
Sarnia Ranching Co., Re.....	170
Sask. Creamery Co., Linde Canadian Refrigerating Co. v.....	126, 181
Sask. Elevator Co. v. Can. Credit Men's Ass'n.....	52
Sask. General Trust Corp., West v.....	54
Sask. Land & Homestead Co. v. Calgary & Edmonton R. Co.....	256, 259
Sask. Land & Homestead Co. v. Moore.....	164, 285, 387
Saskatoon Hardware Co. v. Priel.....	309
Saskatoon Co., Loneragan & Hansford v.....	72
"Saturday Night," Augustine Automatic Rotary Engine v.....	21, 422, 553
Saulsberry v. Ozias.....	700
Sault Ste. Marie School Board, McLeod v.....	145
Savignac, Ostigny v.....	429, 539
Sawyer-Massey v. Tohms.....	609
Sawyer-Massey Co. v. White.....	408
Scandinavian v. Kneeland.....	565
Scarth, Re.....	346
Scaynetti, R. v.....	107, 376
Scharf v. Dillabough.....	600
Scharf v. General Animals Ins. Co.....	359
Schavol v. Silverman.....	58
Schell v. City of Regina.....	287, 452, 515
Scheuerman v. Scheuerman.....	336
Schilling, R. v.....	111, 229, 650, 651
Schmidt, Carruthers v.....	134
Schmidt v. Schmidt.....	186
School Com'rs of Ste. Genevieve, Paquin v.....	615
Schooley & Lake Erie & North R. Co., Re.....	220
Schooner Valiant, The King v.....	300
Schrader v. Manville.....	694, 704, 705
Schrader, Stewart Bros. v.....	674
Schuch v. Meldrum.....	551
Schultz, Harrison v.....	11
Schwartz v. Williams.....	488
Scotstown, Corp. of, Canada Investment v.....	602
Scott, Bateman v.....	305
Scott, Friedman v.....	72
Scott Fruit Co., Mayhew v.....	601
Scott v. Silver.....	179
Scott, Sleuter v.....	155
Scottish Canadian Canning Co. v. Dickie.....	162
Scrase, Armitage v.....	187
Scrim Lumber Co. v. Ross.....	77
Security Life Ins. Co., Lebel v.....	162
Security Life Ins. Co., Perron v.....	629
Security Life Ins. Co. v. Power.....	360, 678
Security National Ins. Co., Brookler v.....	309
Security Storage Co., McGale v.....	714
Seguin v. Sandwich, Windsor and Amherstburg R. Co.....	642
Seifert v. Seifert.....	192, 244, 722
Seigman v. Miller, Spencer & Co.....	410
Seneca Superior Silver Mines, Hull v.....	448, 450
Sénécal v. G.T.R. Co.....	428, 586
Sénécal, Perron v.....	204
Severt v. Plaunt.....	571
Sevigny, Bonneau v.....	457

Sex-Slo.]	COLUMN
Sexsmith v. McMath.....	437
Shaidle, Hocken v.....	302
Shajoo Ram v. The King (No. 2).....	522
Shandro, Rudyk v. 215, 250, 437, 438, 559, 678	
Shannon Co., William, v. Crane.....	349
Sharkey, Village of Morrisburg v.....	138
Sharp v. Ingles.....	116, 395, 608
Sharp & Village of Holland Landing, Re.....	372
Sharpe v. C.P.R. Co.....	451
Shaw, Re Land Registry Act and.....	412, 557
Shearer v. Reader.....	3
Shenango Co. v. Soo Dredging Co.....	716
Shenkman v. Steinbook.....	285
Shepard v. Astley.....	25
Shepard v. Bruner.....	277, 347, 685
Shepard, Canada Glass Mantels & Tiles v.....	386
Shepherd, Purvis v.....	404
Sheppard v. Godfrey.....	691
Sheppard, Rex ex rel La Fleche v.....	251, 499, 501, 523, 524
Sher, Palter v.....	487
Sherbrooke, Westbury v.....	659
Sherwood, Rur. Mun. of, Carleton v.....	325
Sherwood, Rur. Mun. of, Parry v.....	658
Sherwood, Rur. Mun. of, Wilson v.....	658
Shetler v. Foshay.....	414
Shewfelt v. Kincardine.....	82, 93
Shier v. Hackett.....	707
Shierman v. Harris & Craaske.....	311, 362
Shillington, Bank of Ottawa v.....	78
Shilton, Wallbridge & Co. v. Michie.....	334
Shipman v. Can. Imperial Trust Co.....	480
Shipman v. Pélouquin.....	91
Shives Lumber Co. v. Chaleur Bay Mills.....	433, 533
Short, Re.....	728
Short v. Field.....	347
Shun, West v.....	50, 406, 566
Siegler v. Provincial Fire Ins. Co.....	359
Sigurdson, Re Pall.....	67, 568
Silver, Scott v.....	179
Silverman, Schavol v.....	58
Silverman v. White.....	217
Simard v. Dubord.....	29
Simard, Lessard v.....	549
Simard v. Rousseau.....	401
Simmons v. Powell.....	246
Simpchehen v. Montreal Tramways Co.....	33
Simpson, Elliott v.....	146
Simpson v. Genser.....	47
Simpson v. Malcolm.....	233, 272, 281, 516
Simpson, Parks v.....	391
Simuluk, R. v.....	377
Sinclair, Hetherington v.....	211, 482, 711
Sinclair v. Windsor, E. & L.S. R.R. Co.....	103
Singer, Re.....	722, 727
Singer v. Davis.....	310
Sinkolo, R. v.....	380
Sinton & Leitch, Baudistel v.....	550
Skead, Boland v.....	332
"Skeena," The Hewitt v.....	628
Skeffington, Curtis v.....	289
Skinner, Ledingham v.....	292
Slatky v. Kaufman.....	697
Sleuter v. Scott.....	155
Sloan, Robillard v.....	525, 526
Slobodian v. Harris.....	480
Slowman, v. Brenton.....	600

Sma-Sta.]	COLUMN
Small v. Dominion Automobile Co.	610, 611
Smart Hardware & Contracting Co. v. Town of Melfort	351
Smid v. Townsend	458
Smith, Re	728
Smith, Bell v.	539
Smith, C.N.O. R. Co. v.	45
Smith v. Haines	167
Smith v. Humbervale Cemetery Co.	160
Smith, Koop v.	304
Smith v. Master of Titles	320
Smith v. Metzger	310
Smith, Orenstein v.	84
Smith v. Smith	312, 528
Smith, Stocker v.	3
Smith, Trusts & Guarantee Co. v.	238, 312
Smith, Wilson v.	247
Smith v. Wright	483
Smith, Young v.	151, 152, 171
Smith's Falls Public Hospital, Lavere v.	331
Smithson v. Smithson	293
Snaith, Gibson v.	36, 183, 635
Snider, Central Trust and Safe Deposit Co. v.	631, 685
Snyder, Carmangay v.	690
Snyder v. Minnedosa Power Co.	551
Snyder, R. v.	200, 673, 674
Soboloff v. Reeder	697
Soleil Pub. Co., Fournier v.	421, 422, 424
Solicitor, Re	624, 625
Solodinski, Cut-rate Plate Glass Co. v.	466, 467
Soloway v. Gow	84
Sommer, Holstead v.	296
Sonenblum v. Insenga	410
Sonshine, Halstead v.	486, 491
Sonshine, Lavine v.	489
Soo Dredging Co., Shenango Co. v.	716
Soper v. City of Windsor	663
South East Corp'n., Ltd., Re	177
Southern Alberta Land Co., Munic. of McLean v.	655
Southgate Logging Co., Gilbert v.	27, 511
Sovereign Bank, Re; Newman's Case	175
Sovereign Bank, Pyke v.	74, 283
Spadafora v. Griffin & Welch	149
Spanish River Pulp & Paper Mills Co., Luczycki v.	14
Sparrow v. Corbett	73
Sparta State Bank v. Alberta Financial Brokers	75
Speare, Fry & Moore v.	10
Spectar v. Cluthe	596
Spedding v. City of Montreal	504
Spencer, Calogery v.	297, 436
Spencer v. Farthing	523
Spera, R. v.	619
Sperdakes, R. v.	205, 669
Sperer, Currie v.	489
Spray, R. v.	618
Springer v. Anderson	632
Sproule v. Isman	143
Spruce Creek Power Co., Deisler v.	369, 476, 477
Stables v. United Gas and Fuel Co.	511
Stack v. Whittall	457
Stafford, Bienvenue v.	187
Stanco Ltd. & Bank of B.N.A., Bank of Ottawa v.	265, 273

Sta-Sto.]	COLUMN
Stamford v. Ontario Power Co.	616
Stancul, National Trust v.	329
Standard Bank, Bank of B.N.A. v.	65, 182
Standard Bank v. Ellis	596
Standard Bank v. McCullough	75
Standard Bank v. Wettlaufer	74, 276
Standard Crushed Stone Co. v. G.T.R. Co.	257
Standard Life Ass. Co. & Keefer, Re	363
Standard Trusts Co. v. Little	336, 708
Standard Trusts Co. v. Treas. of Manitoba	127, 665
Stanford, Borden v.	169, 686
Stanley v. Struthers	479, 702
Stanoszek v. Canadian Collieries	517
Staples, Gardner v.	415
Starke v. S.S. Mack	623
Starland, Rur. Mun., Blomfield v.	218, 260, 496
Stearns v. Avery	144, 479
Steedman v. Drinkle	301, 631
Steel Co., Canada Steamship Lines v.	554
Steel Co. of Can. v. Toronto, H. & B. R. Co.	106
Steers v. Szameitat	628
Steeves, Gray v.	62, 432, 569
Steeves, R. v.	109, 112, 318, 375, 381, 647, 649, 650
Steinbook, Shenkman v.	285
Stephan v. National Elevator Co.	514
Stephens, Moon v.	569
Stephenson, Birch v.; Same, McDougall v.	92
"Stephie", The, Peninsular Tug & Towing Co. v.	7, 613
Sterling Loan, Foss v.	286, 391
Stevens, Re; The King v. City of Halifax	439, 526, 661
Stevenson, Leslie v.	133, 135, 138
Stewart, Re	729
Stewart v. Calbert	313
Stewart v. Canadian Financiers	704
Stewart v. Cunningham	692, 699
Stewart v. Horne	128
Stewart v. Jubb	194, 196
Stewart v. Lepage	174
Stewart Bros. v. Schrader	674
Stewart, Howard v.	630
Stewart Iron Works Co. v. B.C. Iron Wire & Fence Co.	231
Stewart Sheaf Loader v. Jacobson	117
Stewart & Town of St. Mary's, Re	498
Stinson Reeb Builders' Supply Co. v. Eastern Trust Co.	37
Stocker v. Smith	3
Stoddard, Venness v.	465, 477
Stodgell, Bennett v.	212
Stoffel, Whitla v.	185
Stoltze Manuf. Co. v. C.P.R. & West Canada Power Cos.	102
Stonehouse v. Valiquette	607
Stonehouse v. Walton	153
Stoner, Kohler v.	165
Stoney Point Canning Co. v. Barry	561
Stoney Point Village v. Bell Telephone Co.	576
Storey, Crocker v.	437
Storey, Hill v.	466
Stout v. Kenny	561

Str-Tho.]	COLUMN
Strachan, Demers v.	338
Stratford Local Option By-law, Re.	373
Strathcona Fire Ins. Co., Carbray v.	361
Street v. Murray.	153
Strong v. C.P.R. Co.	8
Strong, R. v.	8, 9, 201, 676
Struthers, Stanley v.	479, 702
Stuart v. Bank of Hamilton.	161
Stuart v. Taylor.	11, 266, 725
Stubbs, R. v.	307
Studdard, R. v.	331
Stumpf v. Pulleyblank.	446
Sturgeon Falls, Town of, v. Imperial Land Co.	658
Stuyvesant Ins. Co., Westminster Wood-working Co. v.	356
Sudbury Brewing & Malting Co. v. C.P. R. Co.	100
Sullivan v. Furness Withy.	461
Sullivan, Jones v.	572
Superior Rolling Mills Co., Kaministiquia Power Co. v.	209
Surrey, Dist. of, Von Mackensen v.	324
Suttles v. Cantin.	521
Suydam, Kennedy v.	239
Swanson v. McArthur.	387
Swartz, Davidovitch v.	34, 638
Swayze v. Grobb.	166
Sweeney v. De Grace.	721
Swift Current, Corp. of, Yager & West. Trust Co. v.	19
Swift Current, Town of, Jones v.	323, 327
Sykes, Hitchcock v.	562, 704
Sylvestre, Roberge v.	337
Sameitatz, Steers v.	628
Tally, R. v.	130, 342, 344, 399, 646, 651, 676
Tappe, Nisbet v.	535
Tassé v. Goyer.	312
Taxicabs Limited, Laird v.	217
Taylor, Re.	339, 726
Taylor, Auld v.	553
Taylor, Cooper v.	289, 291
Taylor, The King v.	261
Taylor v. Mullen Coal Co.	218
Taylor, Rutherford v.	385
Taylor, Stuart v.	11, 266, 725
Taylor, Union Bank v.	306
Tcharos, Quebec County Realty Co. v.	711
Teasdale v. Dwyer.	404
Teller, Myers v.	13
Temiscouata, Village of, Rioux v.	671
Temple Baptist Church v. Perras.	474
Temple v. Montreal Tramways Co.	678, 679, 681, 682
Tennant, Provincial Fox v.	133, 136
Tervo, Mauvais v.	694
Thames Canning Co. v. Eckardt.	134, 600, 604
Thames Quarry Co. & R.C. Episcopal Corp., Re.	143
Therrien v. Mercier.	525, 568, 614
Thom v. McAr.	692
Thomas and Morris, Re.	486
Thompson, M. Brennen & Sons v.	21, 249, 389
Thompson, Brymer v.	135, 212, 403
Thompson v. Columbia Coast Mission.	188
Thompson, Kildonan Investment v.	704, 705
Thompson & Co., Klukas v.	384, 458, 461, 510

Tho-Tor.]	COLUMN
Thompson, R. v.	381
Thomson, Dorchester Electric Co. v.	166, 168, 631
Thomson v. Willson.	485
Thomson, Willson v.	489
Thornton R. v.	20
Thorsteinson v. Rur. Mun. of North Norfolk.	503
Tibbetts, Mills v.	487
Tidsbury v. Garland; Re Lakeside Provincial Election.	252, 254
Tidy v. Cunningham.	312
Tilbury Gas Co. v. Maple City Oil & Gas Co.	138
Till v. Town of Oakville.	156, 283
Timmins, Browne v.	477
Titchmarsh, R. v.	108, 196
Todd v. Worthington.	139
Todesco v. Mass.	59
Tohms, Sawyer-Massey v.	609
Tom Gung v. Fong Lee.	592
Tompkins, Chevalier v.	146
Toronto Brick Co. v. Brandon.	76
Toronto and Bulmer, McPhee v.	510
Toronto, Re Casci and.	219
Toronto, City of, Chalmers v.	552
Toronto, City of, Green Fuel Economiser Co. v.	62
Toronto, City of, Interurban Electric Co. v.	497
Toronto, City of, Re Linden and.	184
Toronto, City of, Lucas v.	643
Toronto, City of, Mackenzie v.	92
Toronto, City of, McCowan v.	490
Toronto, City of, v. Pilkington Bros.	92
Toronto, City of, Rogers v.	499
Toronto, City of, Toronto Electric Light Co. v.	501
Toronto, City of, Toronto Suburban R. Co. v.	640
Toronto Electric Light Co. v. City of Toronto.	501
Toronto Electric Light v. Interurban Electric Co.	140
Toronto General Hospital Trustees & Sabiston, Re.	403
Toronto General Trusts v. Gordon Mackay & Co.	137
Toronto General Trusts, McEwan v.	292
Toronto General Trusts v. Ritchie.	490
Toronto, Hamilton & Beamsville R. Co., Steel Co. of Can. v.	106
Toronto, Hamilton & Buffalo R. Co., Misite v.	555
Toronto, Re Masonic Temple Co. &	92
Toronto Police Benefit Fund, Welsh v.	556
Toronto Power Co., Jasper v.	448
Toronto Power Co. v. Paskwan.	449
Toronto Power Co. v. Raynor.	448
Toronto Power Co., Raynor v.	447
Toronto R. Co. & City of Toronto, Re.	19, 641
Toronto R. Co., Dale v.	515, 677
Toronto R. Co., Gooderham v.	642
Toronto R. Co., Hill v.	713
Toronto R. Co., R. v.	520, 521, 522
Toronto Suburban R. Co. v. City of Toronto.	640
Toronto, Tp. of, McConnell v.	396, 596

Tor-Uni.]	COLUMN
Toronto & York Radial R. Co. and Toronto, Re.....	641
Toronto & York Radial R. Co., Humberstone v.....	642
Town of (Indexed under name).....	
Township of (Indexed under name).....	
Townsend, Harris v.....	564
Townsend, Smid v.....	458
Traders Trust & Kory, Re.....	165, 239
Trail, Molyneux v.....	347, 609
Transcontinental Townsite Co., Re; Plainview Farming Case.....	173, 186
Transcontinental Townsite Co., Plainview Farming Co. v.....	192, 532, 700
Traunweiser v. Johnson.....	285, 711
Travato v. Dominion Canners.....	462
Treasurer of Manitoba, Standard Trusts Co. v.....	127, 665
Treasurer of Ontario v. Canada Life Ass. Co.....	127
Treloar, Clark v.....	549
Trembly, Michaud v.....	459
Trenholm v. Dominion Express Co.....	99, 279, 731
Trepannier v. Lalonde.....	706
Trevarton, Crozier v.....	408
Truax, Crawford v.....	254
Trudeau v. Beaudet.....	277, 549
Trudel, Aaron v.....	57
Trudel v. Marquette.....	591, 632
Truesdale, Dyet v.....	385
Trustees of the Church of Our Lord, City of Victoria v.....	656, 662
Trusts & Guarantee Co. v. Boal.....	233
Trusts & Guarantee Co., Foster v.....	54
Trusts & Guarantee Co. v. Grand Valley R. Co.....	579, 588
Trusts & Guarantee Co., Metals Ltd. v.....	471
Trusts & Guarantee Co. v. Smith.....	238, 312
Tucker v. Jones.....	279, 632, 633
Tuckersmith, Tp. of, Jones v.....	247, 328, 329, 495
Turgeon v. The King.....	454
Turnbull v. Rur. Mun. of Pipestone.....	39, 40, 41
Turner v. McGavin.....	695
Turner & Robinson, Kilbuck Coal Co. v.....	138
Turney v. St. John & Que. R. Co.....	43
Tutty v. Heller.....	488, 489
Tweedie, The King v.....	9, 12, 246, 570
Twin City Ice Co. v. City of Ottawa.....	719
Twiss v. Curry.....	48
Two Creek Grain Growers' Ass'n v. C.P.R. Co.....	104
Tyndall, Bolton v.....	562
Tyrrell v. Verral.....	401
Tyson, Union Bank v.....	305
Ullerich, Ormiston v.....	553
Underhill v. C.N.R. Co.....	577
Union Assurance Co. v. B.C. Electric R. Co.....	48, 427
Union Bank v. Dodds.....	70
Union Bank, Knowlton v.....	30
Union Bank v. Lumsden Milling Co.....	483
Union Bank v. Makepeace.....	315
Union Bank v. McKillop.....	161
Union Bank, Re Payne and.....	54
Union Bank v. Taylor.....	306
Union Bank v. Tyson.....	306

Uni-Vic.]	COLUMN
Union Stockyards Co., Leadlay v.....	169
Union Trust Co. v. Chicoutimi Pulp & Wood Co.....	138
Union Trust Co., Re Knickerbocker v.....	589
United Gas & Fuel Co., Stables v.....	511
United Motor Co. v. City of Regina.....	237
U. S. Construction Co. v. Rat Portage Lumber Co.....	466
U. S. Fidelity, Can. Fairbanks Morse v.....	81
U. S. Fidelity v. Gouin.....	186, 238
U. S. Fidelity & Guaranty Co., Arnprior v.....	82
U. S. Fidelity & Guaranty Co., Foster v.....	36
U. S. Fidelity & Guaranty Co., McPherson v.....	81, 139, 286
U. S. Fidelity & Guaranty Co. v. Weber.....	566
Upton, Duff v.....	4, 627
Upton, R. v.....	200
V. V., E.R. & N. R. Co., Vancouver, v.....	323, 575
Valiquette, Damphousse v.....	210
Valiquette v. Gagnon.....	601
Valiquette, Stonehouse v.....	607
Valliant, Cormier v.....	321, 328
Van Aalst, Gier v.....	86
Vanasse, Hamelin v.....	65
Vanasse v. Robillard.....	689
Van Camp v. Freeman.....	245
Vancouver Breweries, Dana & Fullerton v.....	404
Vancouver Exhibition Ass'n, Lund v.....	148
Vancouver Lumber Co., Col. Bitulithic Co. v.....	161
Vancouver v. V.V., E.R. & N.R. Co.....	323, 575
Van den Berg, Re Mulholland & Vandry, Quebec R.L.H. & P. Co. v.....	255, 365, 509
Van Every, Re.....	726
Van Horst, R. v.....	279
Vanier v. Bonenfant.....	409
Vansickle v. James.....	246
Vansickler, McKnight Construction Co. v.....	160, 161
Van Walleghen, Reyneurt v.....	603
Van Zonnefeld v. Gilchrist.....	601
Varley v. Commonwealth Trust Co.....	629
Varlow Foundries Ltd., Braden v.....	142
Vaughan v. Parker.....	244
Vegreville, Town of, Weeks v.....	500
Veilleux v. Boulevard Heights.....	26, 700
Veilleux v. Roy.....	230
Vellie, Ripley v.....	72
Vendetti, Benoit v.....	188
Venness v. Stoddard.....	465, 477
Verdon, Barre v.....	188
Verral, Tyrrell v.....	401
Versailles, etc., Beauchemin v.....	21
Versailles v. Harel.....	182, 382
Vézina v. Lafortune.....	143, 418
Vézina v. Laperle.....	510
Vick v. Morin & Thompson.....	512, 514
Vick, Wirta v.....	56
Victor v. Webb.....	186
Victoria, Halpin v.....	299
Victoria, City of, Hanna v.....	429
Victoria, City of, v. Trustees of the Church of Our Lord.....	656, 662

Vic-Wel.]	COLUMN	Wem-Wil.]	COLUMN
Victoria Saanich Co. v. Wood Motor Co.	183, 213	Wemp, Re.	727
Vidal, Re.	346	Wentzell v. New Brunswick &c. R. Co.	282, 453, 461
Viger Park Co., Courchene v.	162, 166, 172	Werner, Gauthier v.	607
Vigneault, Martel v.	335	West Canada Pub. Co., Arsenych v.	240
Vilandre v. Allie.	170	West, R. v.	522
Village of, (Indexed under name)		West v. Sask. General Trust Corp.	54
Villemaire v. Caron.	227	West v. Shun.	50, 406, 566
Villeneuve, Rolph v.	607	West Vancouver, Ramsay v.	260
Viola v. Mackenzie, Mann & Co.	13	Westbury v. Sherbrooke.	659
Violette, Gordon v.	392	Western Canada Fire Ins. Co., Re.	167, 168, 197
Vivian v. Clergue.	710	Western Canada Flour Mills Co. v.	601
Vivian, Douglas v.	18, 288, 411	Crown Bakery.	
Vogel v. McLeod.	3	Western Canada Flour Mills, Pescovitch	517
Vokes, Rankin v.	552	Western Canada Power Co., Bergklint v.	448
Volcanic Oil & Gas Co. v. Chaplin.	190	Western Jobbers, Northern Elevator v.	62
Vondette v. Vondette.	720, 721	Western Motors Ltd. v. Gilfoy.	34, 536
Von Mackensen v. Dist. of Surrey.	324	Western Ontario Munic. v. G.T., M.C.	
Vulcan Trade-mark, Re.	197, 671, 672, 673	& P.M. R. Cos.	102, 103
Wabash R. Co., Ball v.	451	Western Security Bank v. Martin.	384
Wabash R. Co., Gray v.	584	Western Trust Co. v. Duncan.	223
Wade v. Crane.	138	Western Trust Co. v. City of Regina.	454
Wagner, Re.	343, 546	Westholme Lumber Co. v. St. James	142
Walcott v. Walcott.	242	Ltd.	
Waldner, Can. Bank of Commerce v.	64	Westminster Woodworking Co. v. Stuy-	356
Walker v. Booth.	231	vesant Ins. Co.	
Walker v. Brown.	588	Westport Mfg. Co., McCammon v.	175
Walker v. Card.	368	Westwood & U. S. Fidelity & Guaranty	
Walkey v. Yurtas.	489	Co., Ramsay v.	50
Wall v. Cape.	453	Wetlaufer, McMullen v.	437
Wallace, Re.	724	Wetmore, Globe & Rutgers Fire Ins. Co.	
Wallace v. City of Windsor.	326	v.	210, 355, 562
Wallace v. Clapp.	117	Wettlaufer, Standard Bank v.	74, 276
Wallace v. Gummerson.	706	Weyburn Security Bank v. Martin &	
Wallace, R. v.	279, 344, 669	Diemert.	385
Waller v. The King.	23	Whalen, Revillon v.	305
Walsh, Can. Pac. R. Co. v.	33	Whaley v. Linnenback.	468
Walter v. Adolph Lumber Co.	352	Wheatley v. City of Calgary; Lusk v.	
Walter v. Leduc.	80, 178, 612	City of Calgary.	324
Walters, Meriden Britannia Co. v.	128, 129	Wheatley, Dunn v.	335
Walton, Stonehouse v.	153	Wheeler v. Chapman.	528
Ward, Re.	728	Whelan v. Town of Aylmer.	660
Ward, Ottawa Forwarding Co. v.	99	Whitchurch, Tp. of, Linstead v.	325
Wardle, Re.	346	White v. T. D. Cavanagh, Ltd.	376
Warren v. Cairns.	487	White v. Dunning.	46, 341
Warren, De Sable Union v.	611	"White", The, Farrell v.	616
Warren & Dyett, Rendall, Mackay,		White, R. v.	204, 206
Michie v.	464, 468, 471	White Rock Resort Dev. Co., Beseloff v.	470
Warwick Pants Manuf. Co., Pare v.	409	White, Sawyer-Massey Co. v.	408
Washington & Johnson v. Raper, etc.,		White, Silverman v.	217
Burial Co.	552	Whiteside, Re; Rex v. McInroy.	128
Waterloo Manufacturing Co. v. Barnard	592	Whitesides, Donovan v.	605
Watson, Alderson v.	410	Whitla v. Stoffel.	185
Watson Carriage Co. v. Auto-Transportation Co.	605	Whittall, Stack v.	457
Watson, Godkin v.	293	Whyte v. McTaggart.	138, 444
Watson v. Jackson.	129	Whyte v. National Paper Co.	563
Watson v. Morgan.	737	Wickham, Parish of, Rivard v.	193, 659
Webb, Victor v.	186	Wickwire v. Carver.	70
Weber, U.S. Fidelity & Guaranty Co. v.	566	Widder, Gendreau v.	535
Weddell v. Douglas.	118	Wiens, Heinrichs v.	155, 421
Weddell v. Larkin.	142	Wilkins, Poucher v.	287
Weeks v. Town of Vegreville.	500	Wilkinson v. Hayes.	396
Weir v. Hamilton Street R. Co.	643	Wilkinson, Peacock v.	86, 562
Weir, Hamilton Street R. Co. v.	643	Willett v. Rose.	560
Weiss, R. v.	342, 638	Willett Martin Co. v. Full.	126, 180
Welsh v. Toronto Police Benefit Fund.	556	William Shannon Co. v. Crane.	349
Weltz v. Hoy.	604	Williams v. Black.	274, 621, 633, 707

Wil-Wol.]	COLUMN
Williams, Lobel v.	211, 690, 691, 693
Williams Machinery Co., Pennoyer Co. v.	74, 77
Williams, Schwartz v.	488
Williamson, Cordingley v.	194
Willie v. DeLisle.	612
Willis, R. v.	373
Willson v. Thomson.	489
Willson, Thomson v.	485
Wilson, Aroni v.	246
Wilson Assignment, Re.	55
Wilson v. B.C. Refining Co.	169
Wilson v. City of Hull.	142
Wilson Estate, Re.	55, 187
Wilson, Harris, v.	70
Wilson, The King v.	258
Wilson, Lethbridge v.	425
Wilson v. Mishler.	533
Wilson, R. v.	203
Wilson, Robertson v.	305, 550
Wilson v. Rur. Mun. of Sherwood.	658
Wilson v. Smith.	247
Wilston v. G.T.R. Co.	38, 461
Wilton v. Manitoba Independent Oil Co., Re.	275, 596
Windatt & Georgian Bay & Seaboard R. Co., Re.	184
Windebank v. C.P.R. Co.	39
Winding-up Act & Sovereign Bank, Re.	176
Windsor Auto Sales Agency v. Martin.	266, 304
Windsor, City of, Huth v.	326
Windsor, City of, Réaume v.	28, 321
Windsor, City of, Reynolds v.	520
Windsor, City of, Soper v.	663
Windsor, City of, Wallace v.	326
Windsor, E. & L. S. R.R. Co., Sinclair v.	103
Windsor v. Young.	195, 620
Wingrove v. Wingrove.	135, 555
Winnipeg, City of, C.N.R. Co. v.	660
Winnipeg, City of, v. C.P.R. Co.	322, 576
Winnipeg, City of, v. Winnipeg Electric R. Co.	496
Winnipeg Electric Co., Mehner v.	272, 643
Winnipeg Electric R. Co., City of Winnipeg v.	496
Winnipeg Electric R. Co., Earley v.	517
Winnipeg Joint Terminals, Mallory v.	581
Wirta v. Vick.	56
Wolfenden, Jeffares v.	513
Wolfville Milling Co. v. Dominion Atlantic R. Co.	579
Wollenberg v. Barasch.	57

Wol-Zar.]	COLUMN
Wolsely Tool & Motor Car Co. v. Jackson Potts & Co.	98, 554, 563
Wolverton v. Black Diamond Oil Fields.	169
Wood v. Anderson.	213
Wood v. C.P.R. Co.	95
Wood v. Grand Valley R. Co.	18, 154, 210
Wood, Harris v.	537
Wood v. Mitchell.	564
Woodard, Re.	363
Woodlands, Molison v.	615
Wood Motor Co., Victoria Saanich Co. v.	183, 213
Wood Vallance & Co., Re.	39, 539
Wood Vallance, Imperial Can. Trust Co. v.	79
Woodworth, Kaulbach v.	391
World Building, Champion v.	25, 197
World Newspaper Co., Rex v.	652
Worrell, Re.	203, 646
Worthington, Re.	485, 685
Worthington, Todd v.	139
Wortman v. Frid Lewis Co.	466, 467, 472
Wrenshall, J. I. Case Threshing Machine Co. v.	602
Wright, Freeman v.	446
Wright v. The King.	86, 274
Wright, Tp. of, Monette v.	682
Wright, Naiman v.	386, 487
Wright, R. v.	379
Wright, Smith v.	483
Wurm, Patterson v.	485
Wyatt v. Consolidated Investment; Acres v. Same.	151
Wylie v. Jones.	560
Wylie, Rogers v.	611
Wyton v. Hille.	3, 15
Yager & West. Trust Co. v. Corp. of Swift Current.	19
Yates, Rex ex rel., v. Lawrence.	251
Yeo, Finkbeiner v.	370, 626
York, Tp. of, Hibbard v.	189
Yorkton, Gibney v.	503
Young v. Bank of Nova Scotia.	403
Young, Bastedo v.	604
Young v. Brandon.	532
Young v. Smith.	151, 152, 171
Young, Windsor v.	195, 620
Yurtas, Walkey v.	489
Zart v. Confederation Life.	410

C A S E S

AFFIRMED, REVERSED OR SPECIALLY CONSIDERED

Abr-Att.]	COLUMN
Abramson v. Colonial Ass. Co., 29 W.L.R. 482, varied.....	393
Abrath v. North East R. Co., 11 A.C. 247, followed.....	678
Ackland v. Paynter, 8 Price 95, followed.....	419
Adams & McFarland, Re, 20 D.L.R. 293, distinguished.....	414
Addison v. Ottawa Taxicab Co., 16 D.L.R. 318, distinguished.....	606
Aho, R. v., 8 Can. Cr. Cas. 453, applied.....	677
Ainslie Mining Co. v. McDougall, 42 Can. S.C.R. 420, applied.....	447
Alabastine Co. v. Can. Producer, etc., Co., 17 D.L.R. 813, applied.....	603
Alberta Drilling v. Dome Oil, 8 A.L.R. 340, affirmed in 52 Can. S.C.R. 142, Allcard v. Skinner, 36 Ch.D. 145, followed.....	153
Allen v. Flood, [1898] A.C. 1, applied.....	155
Allen v. The King, 18 Can. Cr. Cas. 1, 44 Can. S.C.R. 331, applied.....	732
Almonte Knitting Co. v. C.P. & M.C.R. Cos.; Almonte Knitting Co. Cas., 3 Can. Ry. Cas. 441, followed.....	101
American Abell Engine & Thresher Co. v. McMillan, 42 Can. S.C.R. 377, followed.....	330
Anderson v. Kilburn, 22 Gr. 385, applied.....	133
Andreas v. C.P.R. Co., 7 Terr. L.R. 327, applied.....	515
Andrew v. Bridgeman, [1907] 1 K.B. 198, followed.....	405
Andrews v. Morris, 7 Dowl. P.C. 712, applied.....	186
Andrews v. Pac. Coast Coal Mines, 15 B.C.R. 56, applied.....	214
Anglesey, Re, 70 L.J.Ch. 810, followed.....	368
Armitage v. Lancashire & Yorkshire R. Co., [1902] 2 K.B. 178, applied.....	455
Armstrong v. Marshall, 19 D.L.R. 183, disapproved.....	152
Arnprior, Town of, v. U.S. Fidelity, 20 D.L.R. 929, affirmed.....	82
Assiniboia Land Co. v. Acres, 25 D.L.R. 439, affirmed on appeal.....	300, 484
Atherstone v. Bostock, 2 Man. & G. 511, 719, applied.....	370
Atkinson v. Smith, 9 N.B.R. 309, not followed.....	515
Atlantic Dock Co. v. New York, 43 N.Y. 64, distinguished.....	390
Atlas Metal Co. v. Miller, [1898] 2 Q.B. 500, followed.....	621
Attorney-General v. Col. Sugar Refining Co., [1914] A.C. 237, distinguished.....	124
Attorney-General v. Kelly (No. 2), 9 W.W.R. 863, affirmed.....	237
Attorney-General for B.C. v. C.P.R. Co., [1906] A.C. 204, followed.....	257

Att-Ben.]	COLUMN
Attorney-General of Canada v. Ritchie Contracting, etc., Co., 20 B.C.R. 333, affirming 17 D.L.R. 778, affirmed.....	319
Badcock v. Freeman, 21 A.R. (Ont.) 633, distinguished.....	604
Baden Machinery Co., Re, 12 O.L.R. 634, followed.....	186
Bailey, Re, L.R. 8 Eq. 94, followed.....	186
Bain v. Fothergill, L.R. 7 H.L. 158, applied.....	211
Baker v. Ambrose, 2 Q.B. 372, distinguished.....	116
Bank of B.N.A. v. McComb, 21 Man. L.R. 58, applied.....	75
Bank of B.N.A. v. McComb, 18 W.L.R. 94, distinguished.....	71
Bank of Hindustan, Re, 12 L.J.Ch. 771, applied.....	152
Bank of Hindustan, Re; Smith's Case, L.R. 3 Ch. 125, followed.....	186
Bank of Montreal v. Black, 9 Man. L.R. 439, followed.....	531
Bank of Toronto v. Lambe, 12 App. Cas. 575, explained and applied.....	127
Bankers' Trust & Barnsley, Re, 19 D.L.R. 590, affirmed.....	179
Bankes v. Jarvis, [1903] 1 K.B. 549, followed.....	621
Banque Ville Marie v. Millar, 22 Que. S.C. 162, criticized.....	694
Bartlett v. Pentland, 10 B. & C. 760, followed.....	560
Basten v. Butter, 7 East 479, applied.....	609
Baxter v. Kennedy, 35 N.B.R. 179, distinguished.....	433
Beattie v. Wenger, 24 A.R. (Ont.) 72, followed.....	531
Bédard v. Phoenix Land, etc., Co., 8 D.L.R. 686, affirmed.....	161, 227
Beddoe, Re, [1893] 1 Ch. 547, followed.....	291
Belcher v. Hudsons, 1 S.L.R. 474, distinguished.....	531
Bell v. G.T.R. Co., 15 D.L.R. 874, distinguished.....	584
Bell v. Moffat, 18 N.B.R. 151, not followed.....	24
Belmont, R. v., 23 Can. Cr. Cas. 89, followed.....	203
Benson v. International Harvester Co., 16 D.L.R. 350, not followed.....	637
Bentley v. Craven, 18 Beav. 75, distinguished.....	536
Bentsen v. Taylor, [1893] 2 Q.B. 274, 280, applied.....	608
Benyon v. Cresswell, 12 Q.B. 899, 900, applied.....	79

Ber-Bri.]	COLUMN	Bro-Can.]	COLUMN
Beranek, Re, 24 Can. Cr. Cas. 252, followed.....	317	Bromfield v. Smith, Doe d., 2 T.R. 436, applied.....	347
Bernardin v. North Dufferin, 19 Can. S.C.R. 581, followed.....	496	Brooks-Sanford Co. v. Theodore, etc., Co., 22 O.L.R. 176, distinguished..	474
Berkeley Church v. Stevens, 37 U.C.Q.B. 9, applied.....	133	Brooks-Scanlon v. Fakkema, 44 Can. S.C.R. 412, applied.....	447
Bertrand v. Canadian Rubber Co., 12 Man. L.R. 27, followed.....	303	Brown v. Cambridge, 85 Mass. 476, applied.....	390
Bessemer Gas v. Mills, 8 O.L.R. 647, applied.....	180	Brown v. Coleman Development Co., 24 D.L.R. 869, reversed in 35 O.L.R. 219.....	134
Besterman v. British Motor Co., [1914] 3 K.B. 181, followed.....	156, 185	Brown v. Coughlin, sub nom. Re Stratford Fuel Co., 13 D.L.R. 64, affirmed.....	177
Birdsall & Asphodel, Re, 45 U.C.R. 149, followed.....	328	Brown v. Moore, 32 Can. S.C.R. 93, followed.....	70
Birkett v. Bisonette, 15 O.L.R. 93, applied.....	430	Browning v. The Masson Co., 24 Que. K.B. 389, reversed in 52 Can. S.C.R. 137, 209	
Blackwoods & Manitoba Brewing & Malting Co. v. C.N.R. Co. & City of Winnipeg, 45 Can. S.C.R. 92, distinguished.....	579	Bryant, Re, 44 Ch.D. 218, applied.....	700
Blade v. Arundel, 1 M. & S. 711, followed.....	419	Bunting v. Bell, 23 Gr. 584, overruled..	474
Blank, R. v., 10 Can. Cr. Cas. 358, followed.....	650	Burchell v. Gowrie & Co., [1910] A.C. 614, followed.....	90
Blaugas Co. v. Can. Freight Ass'n, 13 Can. Ry. Cas. 176, 178, followed....	104	Burford, Corp. of, v. Chambers, 24 O.R. 663, applied.....	39
Blomfield v. Rur. Mun. of Starland, 21 D.L.R. 859, affirmed.....	260	Burpee v. Carvill, 16 N.B.R. 141, followed.....	232
Blue v. Red Mountain R. Co., [1909] A.C. 362, followed.....	582	Burroughs v. Cottrell, 3 Sim. 375, followed.....	730
Board v. Board, L.R. 9 Q.B. 48, followed.....	11	Burt v. Dominion Steel & Iron Co., 25 D.L.R. 252, leave to appeal.....	262
Boissiere v. Brockner & Co., 6 T.L.R. 85, followed.....	390	Burt v. Sydney, 15 D.L.R. 429, applied.....	262
Boland v. G.T.R. Co., 18 Can. Ry. Cas. 60, followed.....	257	Bywater v. Brandling, 7 B. & C. 643, applied.....	314
Bolter v. Hamilton, 15 U.C.C.P. 125, followed.....	265	Cairney v. Back, [1906] 2 K.B. 746, applied.....	57
Bolton, R. v. (1841), 1 Q.B. 66, followed.....	112	Caisley v. Stewart, 21 Man. L.R. 341, followed.....	274
Bonanza Creek Gold Mining Co. v. The King, 21 D.L.R. 123, reversed in 26 D.L.R. 273.....	158	Cameron v. Bradbury, 9 Gr. 67, followed.....	286
Bond v. Conmee, 15 Ont. R. 716, 16 A.R. 398, approved.....	108	Cameron v. Carter, 9 O.R. 426, applied.....	691
Booth v. The King, 10 D.L.R. 371, affirmed.....	669	Cameron v. Cuddy, 13 D.L.R. 757, [1914] A.C. 651, followed.....	41
Booth v. McIntyre, 31 U.C.C.P. 183, distinguished.....	670	Campbell v. Irwin, 32 O.L.R. 48, reversed.....	407
Boulton v. Jeffrey, 1 Ont. E. & A. 111, distinguished.....	572	Campbell v. Roubert, 9 W.W.R. 175, affirmed.....	479
Bower v. Peate, 1 Q.B.D. 321, followed.....	511	Canada Foundry Co. v. Mitchell, 32 Can. S.C.R. 452, followed.....	679
Braun v. Hughes, 3 Man. L.R. 177, distinguished.....	704	Canada Steel & Wire Co. v. Ferguson, 19 D.L.R. 581, reversed.....	61, 426
Breithaupt v. Marr, 20 A.R. 689, distinguished.....	288	Canadian Bank of Commerce v. Waite, 7 W.L.R. 255, distinguished.....	71
Breithaupt v. Marr, 20 A.R. 689, followed.....	306	Canadian Bank of Commerce v. Waldenar & Murphy, 30 W.L.R. 857, followed.....	71
Brennen & Sons v. Thompson, 22 D.L.R. 375, followed.....	21	Canadian China Clay Co. v. G.T., C.P. & C.N.R. Cos., 18 Can. Ry. Cas. 347, followed.....	104
Brenner v. Toronto R. Co., 13 O.L.R. 423, reversed.....	514	Canadian General Electric Co. v. Can. Rubber Co., 47 Que. S.C. 24, affirmed in 52 Can. S.C.R.....	214
Brewer v. Conger, 27 O.A.R. 10, followed.....	403	Canadian Northern R. Co., R. v., 18 Can. Cr. Cas. 170, followed.....	577
Brindamour, R. v., 11 Can. Cr. Cas. 315, followed.....	24	Canadian Pacific R. Co. v. Frechette, 23 Que. K.B. 203, reversed.....	447, 452, 453, 513
B.C. News Co. v. Express Traffic Ass'n, 13 Can. Ry. Cas. 176, 178, followed....	104		
B.C. Portland Cement Co., Re, 22 D.L.R. 609, affirmed.....	82, 172		
Britton v. Foote, 2 Bro. C.C. 636, followed.....	403		

Can-Chu.]	COLUMN
Canadian Pacific R. Co. v. Notre Dame de Bonsecours, [1899] A.C. 367, applied.....	126
Canadian Pacific R. Co., R. v., 23 Can. Cr. Cas. 487, affirmed on a different ground.....	497
Canadian Pacific R. Co., R. v., 14 Can. Cr. Cas. 1, applied.....	241
Canadian Pacific R. Co., R. v., [1911] A.C. 328, held not applicable.....	700
Canadian Pacific R. Co. v. Silzer, 3 S.L.R. 162, followed.....	286
Canadian Portland Cement Co. v. G.T. & B. of Q.R. Co., 9 Can. Ry. Cas. 211, followed.....	104
Canadian Railway Assn. v. Pammenter, 180 Mass. 418, applied.....	595
Cantillon, R. v., 19 O.R. 197, distinguished.....	650
Cape Breton, Re, 29 Ch.D. 795, distinguished.....	536
Carlisle, &c., Co., v. Bragg, [1911] 1 K.B. 489, followed.....	87
Carmichael, R. v., 7 Can. Cr. Cas. 167, not followed.....	522
Carpenter v. Smith, 1 Web. Pat. Cas. 530, followed.....	541
Carter v. Clarke, 14 Times L.R. 172, applied.....	458
Carter v. Stewart, 7 P.R. 85, followed.....	184
Carter v. White, 25 Ch.D. 686, applied.....	73
Carus-Wilson, Re, 18 Q.B.D. 7, applied.....	40
Cathcart, Ex parte; Re Deakin, [1900] 2 Q.B. 478, applied.....	58
Cedars Rapids v. Lacoste, 16 D.L.R. 168, followed.....	260
Central Bank of Canada, Re, 15 Ont. R. 309, followed.....	172
Central Trust & Safe Deposit Co. v. Snider, 6 O.W.N. 337, reversed.....	685, 686
Challis v. London & S.W.R. Co., [1905] 2 K.B. 154, distinguished.....	457
Chalmers v. Campbell, 21 D.L.R. 635, reversed in 9 W.W.R. 1435.....	87
Champion v. World Building Co., 18 D.L.R. 555, appeal quashed.....	25, 197
Chaney v. Payne, 1 Q.B. 712, applied.....	647
Chang Hang v. Piggott, [1909] A.C. 312, applied.....	129
Chapin v. Matthews, 22 D.L.R. 95, reversed.....	608
Chaplin v. Hicks, [1911] 2 K.B. 786, applied.....	222
Charing Cross v. London Hydraulic, [1913] 3 K.B. 442, applied.....	311
Chicago & Alton R. Co. v. Union, etc., Co., 109 U.S. 702, followed.....	466
Chiniquy v. Begin, 20 D.L.R. 347, reversed.....	21, 222, 272, 421
Chiniquy v. Begin, 7 D.L.R. 65, varied.....	21, 222, 272, 421
Choate v. Ontario Rolling Mill Co., 27 A.R. (Ont.) 155, applied.....	448
Church v. Fenton, 5 Can. S.C.R. 239, followed.....	571
Church v. Hamilton, 20 D.L.R. 639, varied.....	122

Cit-Cou.]	COLUMN
City of. (Indexed under name.)	
Civil Service Co. v. General Steam Nav. Co., [1903] 2 K.B. 756, applied.....	36
Clarence, Reg. v., 22 Q.B.D. 23, followed.....	637
Clark v. C.P.R. Co., 2 D.L.R. 331, distinguished.....	271
Clark v. Ward, 13 W.L.R. 83, followed.....	583
Clarkson v. Sterling, 14 O.R. 460, followed.....	303
Clayton v. C.N.R. Co., 17 Man. L.R. 426, applied.....	582
Clergue v. Vivian, 41 Can. S.C.R. 607, applied.....	708
Clinton Thresher Co., Re, 1 O.W.N. 445, applied.....	180
Close, Ex parte, 14 Q.B.D. 386, applied.....	80
Clough v. L. & N.W.R. Co., L.R. 7 Ex. 26, applied.....	152, 302
Clover Bar Coal Co. v. Humberstone, G.T.R. & Clover Bay Sand & Gravel Cos., 45 Can. S.C.R. 346, distinguished.....	597
Cobban v. C.P.R. Co., 23 A.R. (Ont.) 115, applied.....	515
Coffin v. Gillies, 7 O.W.N. 354, reversing 6 O.W.N. 643, affirmed.....	605
Colchester North, Tp. of, v. Tp. of Anderton; Tp. of Gosfield North v. Same, 21 D.L.R. 277, reversed.....	504
Cole v. Reed, 22 D.L.R. 686, affirmed.....	145
Coleman, R. v., 2 Can. Cr. Cas. 523, followed.....	679
Colonial Bank v. Cady, 15 A.C. 267, followed.....	266
Colonial Investment Co. v. Foisie, 1 W.W.R. 397, followed.....	484
Colonial Bank v. Willan, L.R. 5 P.C. 417, applied.....	111
Combined Weighing, etc., Re, 43 Ch.D. 99, applied.....	57
Commissioners v. Pemsel, [1891] A.C. 531, 549, applied.....	636
Compania Sansinena v. Houlder, [1910] 2 K.B. 354, followed.....	532
Connors v. Reid, 25 O.L.R. 44, followed.....	437
Consolidated Car Heating Co. v. Came, [1903] A.C. 509, followed.....	540
Consolidated Plate Glass Co. v. Caston, 29 Can. S.C.R. 624, followed.....	455
Continental Tyre & Rubber Co. v. Daimler Co., [1915] 1 K.B. 893, distinguished.....	14
Cook v. Deeks, 21 D.L.R. 497, reversed.....	164
Corby v. Gray, 15 O.R. 1, followed.....	483
Corby, R. v., 1 Can. Cr. Cas. 457, followed.....	679
Coristine v. Haddad, 21 D.L.R. 350, distinguished.....	230
Cornwallis, Mun. of, v. C.P.R. Co., 19 Can. S.C.R. 702, held not applicable.....	700
Corpton v. Davis, L.R. 4 C.P. 159, followed.....	727
Cossitt v. Cook, 17 N.S.R. 84, applied.....	70
Coulson, R. v., 1 Can. Cr. Cas. 114, applied.....	111
Courtoy v. Vincent, 21 L. J. Ch. 291, followed.....	285

Cow-Dic.]	COLUMN	Dic-Emp.]	COLUMN
Cowley v. Newmarket, [1892] A.C. 345, distinguished.....	324	Dickson v. Law, [1895] 2 Ch. 65, followed.....	739
Cowper Essex v. Acton Local Board, 14 A.C. 153, 169, applied.....	636	Dixon v. Mackay, 21 Man. L.R. 762, followed.....	419
Cox v. English, [1905] A.C. 168, 170, applied.....	398	Dodd v. Vail, 9 D.L.R. 534, affirmed in 10 D.L.R. 694, applied.....	668
Cox v. Hickman, 8 H.L.C. 286, followed.....	55	Dodd v. Vail, 23 W.L.R. 62 and 903, distinguished.....	420
Cox, Regina v., 1 Q.B. 179, followed.....	618	Doe d. Bromfield v. Smith, 2 T.R. 436, applied.....	347
Craigdallie v. Aikman, 1 Dow. 1, applied.....	56	Doe d. Irvine v. Webster, 2 U.C.Q.B. 224, followed.....	265
Crawford, R. v., 6 D.L.R. 380, applied.....	343	Doe d. Pennington v. Tanriere, 12 Q.B. 998, followed.....	403
Crawshay v. Homfray, 4 V. & Ald. 50, applied.....	61	Doherty, Ex parte, 3 Can. Cr. Cas. 310, followed.....	651
Credit Co. v. Pott, 6 Q.B.D. 295, applied.....	115	Doherty v. Giroux, 24 Que. K.B. 433, appeal pending.....	571, 657
Creveling v. Can. Bridge Co., 20 D.L.R. 528, reversed.....	32	Dominion Express Co. v. City of Brandon, 19 Man. L.R. 257, followed.....	351
Crown Tailoring Co. v. Toronto, 33 O. L.R. 92n, not followed.....	499	Dominion Lumber Co. v. Halifax Power Co., 23 D.L.R. 187, affirmed.....	217
Cruikshanks, R. v., 16 D.L.R. 536, followed.....	399	Dominion Permanent v. Morgan, 4 D.L.R. 331, reversed.....	482
Curry v. The King, 15 D.L.R. 347, applied.....	252	Dominion Plumbago Co., Re, 27 Ch.D. 34, followed.....	186
Cust, Re, 18 D.L.R. 647, reversed.....	664	Donohoe v. Hull, 24 Can. S.C.R. 683, distinguished.....	371
Daintrey, Re, [1893] 2 Q.B. 119, distinguished.....	273	Donovan v. Excelsior Life Ins. Co., 22 D.L.R. 307, affirmed.....	357
Dalton v. Angus, 6 App. Cas. 740, applied.....	5	Donovan v. Laing, [1893] 1 Q.B. 629, distinguished.....	390
Damon v. Lamy, 44 Que. S.C. 489, doubted.....	525, 526	Donovan v. Laing, [1893] 1 Q.B. 629, followed.....	502
Dana & Fullerton v. Vancouver Breweries, 25 D.L.R. 508, affirmed.....	404	Dougherty v. Carson, 7 Gr. 31, followed.....	261
Danis v. Hudson Bay Mines, 23 D.L.R. 455, affirmed.....	453	Doyle v. Foley-O'Brien Ltd., 22 D.L.R. 872, affirmed.....	216, 454
Davidson v. Douglas, 15 Gr. 347, followed.....	303	Doyle v. Moirs, 22 D.L.R. 767, appeal to P.C. refused.....	37, 455, 457
Davies and James Bay R. Co., Re. 20 O.L.R. 534, followed.....	262	Drinkle v. Steedman, 14 D.L.R. 835, reversed.....	301
Davies v. London & Provincial Marine Ins. Co., 8 Ch.D. 469, applied and followed.....	315	Dumenko v. Swift-Canadian Co., 32 O.L.R. 87, distinguished.....	14
Davis v. Bomford, 6 B. & N. 245, distinguished.....	83	Dumenko v. Swift-Canadian Co., 32 O.L.R. 87, followed.....	14
Davis v. Taff Vale R. Co., [1895] A.C. 542, applied.....	64	Dunn v. McCallum, 14 O.L.R. 249, followed.....	465
Day v. Day, 17 A.R. (Ont.) 157, applied.....	336	E. v. E., [1903] P. 88, applied.....	36
Day, R. v., 20 Ont. R. 209, followed.....	279	East Freemantle Corp. v. Annois, [1902] A.C. 213, applied.....	502
Day v. Singleton, [1899] 2 Ch. 320, considered.....	211	East London Union v. Metropolitan R., L.R. 4 Ex. 309, applied.....	708
Day v. Vinson, 9 L.T. 654, 723, followed.....	31	Eaton v. Crooks, 3 A.L.R. 1, applied.....	136
Deakin Re; Ex parte Cathcart, [1900] 2 Q.B. 478, applied.....	58	Edmonds v. Hamilton Provident, 18 A.R. (Ont.) 347, applied.....	487
De Bussche v. Alt, 8 Ch.D. 310, applied.....	705	Edwards v. Brudenell, [1893] A.C. 360, applied.....	347
Deere Plow Co., John, v. Tweedy, 15 D.L.R. 518, distinguished.....	50	Ellesmere Brewery Co. v. Cooper, [1896] 1 Q.B. 75, followed.....	565
Deere Plow Co., John, v. Wharton, 18 D.L.R. 353, [1915] A.C. 330, applied.....	126	Elliman Sons & Co. v. Carrington & Sons, [1901] 2 Ch. 275, not followed.....	144
Deere Plow Co., John, v. Wharton, 18 D.L.R. 353, distinguished.....	193	Elliott, R. v., 3 Can. Cr. Cas. 95, followed.....	279
Deering v. Hayden, 3 Man. L.R. 219, followed.....	73	Ellis v. Rogers, 50 L.T. 660, applied.....	708
Delage v. Germain, 12 Que. L.R. 149, applied.....	526	Elvidge v. Meldon, 24 L.R. Ir. 91, followed.....	408
Derry v. Peek, 14 A.C. 337, applied.....	302	Empire Cream Separator Co. v. Maritime Dairy Co., 38 N.B.R. 309, followed.....	181
"Despatch," The, The King v., 23 D.L.R. 351, reversed.....	8		
Dick v. Yates, 18 Ch.D. 76, dictum approved.....	156		

Emp-Ful.]	COLUMN	Gag-Gre.]	COLUMN
Empire, etc., Re; Somerville's Case, L. R. 6 Ch. 266, applied.....	523	Gagnon v. The Savoy, 9 Ex. 238, followed.....	617
Empire Saak., etc., v. Maranda, 21 Man. L.R. 605, followed.....	114, 303	Gallagher v. Armstrong, 3 A.L.R. 443, followed.....	533
Erb v. G.W.R. Co., 5 Can. S.C.R. 179, distinguished.....	97	Gallagher v. Beale, 14 B.C.R. 247, followed.....	531
Euclid Avenue Trusts Co. v. Hohns, 24 O.L.R. 447, distinguished.....	181	Gallagher v. Beale, 14 B.C.R. 247, not followed.....	531
Evangeline Fruit Co. v. Provincial Fire Ins. Co., 17 D.L.R. 378, reversed.....	359	Garland v. Clarkson, 9 O.L.R. 281, distinguished.....	238
Factories Ins. Co. v. Laforest, 24 Que. K.B. 543, appealed.....	359	Garland v. Toronto, 23 A.R. (Ont.) 238, applied.....	453
Fairclough v. Smith, 13 Man. L.R. 509, followed.....	465	Garland Mfg. Co. v. Northumberland Paper, etc., Co., 31 O.R. 40, distinguished.....	403
False Creek Reclamation Act, Re, 22 D.L.R. 103, affirmed. 40, 44, 221, 369		Gas Power Age v. Central Garage Co., 21 Man. L.R. 496, followed.....	532
Farquharson v. Morgan, [1894] 1 Q.B. 552, applied.....	568	Gaunt, Reg. v., L.R. 2 Q.B. 466, distinguished.....	389
Ferens v. O'Brien, 11 Q.B.D. 21, applied.....	667	Gegg v. Bassett, 3 O.L.R. 263, approved.....	671
Ferguson v. Millican, 11 O.L.R. 36, not applied.....	231	Geldert v. Pictou, [1893] A.C. 524, distinguished.....	324
Fidelity Trust Co. v. Schneider, 14 D.L.R. 224, distinguished.....	232	Gentle v. Faulkner, [1900] 2 Q.B. 267, followed.....	405
Finance Union, Re, 11 Times L.R. 167, approved.....	129	Gentles v. C.P.R. Co., 14 O.L.R. 286, distinguished.....	267
Finch v. Gilray, [1889] 16 A.R. (Ont.) 484, distinguished.....	9	Georgett, R. v., 23 Can. Cr. Cas. 341, reversed in part.....	26
Finlay v. Bristol & Exeter R. Co., 7 Ex. 409, distinguished.....	403	Gibb v. The King, 15 Can. Ex. 157, affirmed by divided Court in 52 Can. S.C.R.....	259
Fisher v. Smith, 4 App. Cas. 1, applied.....	61	Gibbons v. Cozens, 29 O.R. 356, followed.....	286
Fitch v. Rochford, 18 L.J.Ch. 458, applied.....	351	Giblan v. Labourers' Union, [1903] 2 K.B. 600, distinguished.....	155
Fitzgerald v. Clarke, [1908] 2 K.B. 796, applied.....	455	Gier v. Van Aalst, 16 D.L.R. 870, affirmed.....	86
Flight v. Booth, 1 Bing. (N.C.) 370, applied.....	632	Gluckstein v. Barnes, [1900] A.C. 240, distinguished.....	536
Ford v. Chesterfield, 16 Beav. 520, followed.....	183	Goodchild v. Bethel, 19 D.L.R. 161, distinguished.....	696
Ford, Ex parte, [1885] 16 Q.B.D. 305, applied.....	402	Goodison Thresher Co. v. Tp. of McNab, 19 O.L.R. 188, distinguished.....	325
Forget v. Cement Products Co., 24 Que. K.B. 445, appealed to P.C.....	168	Goods of Godfrey, Re, 69 L.T.R. 22, followed.....	721
Foss v. Sterling Loan, 21 D.L.R. 755, affirmed.....	286	Grainger v. O. of Can. Home Circles, 31 O.L.R. 461, affirmed.....	68
Foster v. Deacon, 3 Madd. 394, applied.....	693	Grand Trunk R. Co. v. Griffith, 45 Can. S.C.R. 380, applied.....	450
Foster v. Mackinnon, L.R. 4 C.P. 704, followed.....	87	Grand Trunk R. Co. v. Griffith, 45 Can. S.C.R. 380, followed.....	513
Foster v. Moss, 4 S.L.R. 421, applied.....	409	Grand Trunk R. Co. v. McDonald, 16 D.L.R. 830, affirmed.....	456
Fowler v. Barstowe, 20 Ch.D. 240, followed.....	739	Grand Trunk R. Co. v. McDonald, 5 D.L.R. 65, followed.....	456
Fowler and Waterdown, Re, 7 O.W.N. 309, followed.....	495	Grand Trunk R. Co. v. McKay, 34 Can. S.C.R. 81, 85, applied.....	515
France v. Clark, 26 Ch.D. 257, distinguished.....	266	Grand Trunk R. Co. v. McKay, 34 Can. S.C.R. 81, distinguished.....	584
Fredericton Board of Trade v. C.P.R. Co., reheard and reversed.....	101	Grant v. Acadia Coal Co., 32 Can. S.C.R. 427, applied.....	450
Free Church of Scotland v. Overtoun, [1904] A.C. 515, applied.....	56	Grant v. Winbolt, 23 L.J.Ch. 282, distinguished.....	727
Frejd, R. v., 18 Can. Cr. Cas. 110, applied.....	205	Gray v. Christian Assn., 137 Mass. 329, applied.....	595
Fry, R. v., 19 Cox C.C. 135, applied.....	649, 676	Great North Western v. Charlebois, [1899] A.C. 114, distinguished.....	159
Fuches v. Hamilton Tribune Co., 10 P.R. (Ont.) 409, distinguished.....	180	Green v. Stone, 54 N.J.Eq. 399, approved.....	133
Fullerton Lumber & Shingle Co. v. C.P.R. Co., 17 Can. Ry. Cas. 282, distinguished.....	102	Greenlaw v. C.N.R. Co., 12 D.L.R. 402, distinguished.....	582

Gre-Hil.]	COLUMN	His-Isa.]	COLUMN
Greer v. C.P.R. Co., 19 D.L.R. 140, affirmed.....	428	Hislop, Re, 7 O.W.N. 614, affirmed.....	190
Griffin v. Coleman, 4 H. & N. 265, approved.....	503	Hitchcock v. Humfrey, 12 L.J.C.P. 235, applied.....	73
Griffiths, Ex parte, 5 B. & A. 730, followed.....	318	Hitchcock v. Sykes, 13 D.L.R. 548, affirmed.....	704
Groves v. Mason, 2 A.L.R. 181, applied.....	708	Hobson v. Gorringer, 12 Rul. Cas. 217, applied.....	300
Hach, R. v. 16 Can. Cr. Cas. 196, followed.....	731	Hodgins v. Johnston, 5 A.R. (Ont.) 449, applied.....	118
Hadley v. Baxendale, 23 L.J.Ex. 179, applied.....	214	Hogg v. Farrell, 6 B.C.R. 387, followed.....	554
Hafford v. New Bedford, 82 Mass. 290, approved.....	503	Hogg v. Hogg, 20 D.L.R. 85, affirmed.....	242
Halifax Power Co. v. Christie, 23 D.L.R. 481, affirmed.....	280	Holme v. Brunskill, 3 Q.B.D. 495, distinguished.....	315
Halkett v. Dudley, [1907] 1 Ch. 590, distinguished.....	415	Holmes v. Blogg, 8 Taunt 35, approved and applied.....	347
Halkett v. Dudley, 76 L.J. Ch. 330, followed.....	634	Holmested v. C.N.R. Co., 20 D.L.R. 577, varied.....	349
Hall v. Burgess, 5 B. & C. 332, distinguished.....	408	Holt, Re, 16 Ch.D. 115, followed.....	318
Hamilton Street R. Co. v. G.T.R. Co. (Kenilworth Ave. Crossing Case) 17 Can. Ry. Cas. 393, followed.....	580	Home Investment, Re, 14 Ch.D. 167, followed.....	186
Hamlin v. Wood, [1891] 2 K.B. 488, applied.....	402	Hope v. Hamilton Park Comm'rs, 1 O.L.R. 477, disapproved.....	533
Hamlyn v. Betteley, 6 Q.B.D. 65, applied.....	41	Horton, R. v., 3 Can. Cr. Cas. 84, followed.....	650
Hammond v. Small, 16 U.C.Q.B. 371, applied.....	133	Houle v. Brodeur, 18 Que. S.C. 440, doubted.....	525
Hargreaves v. Security Inv. Co., 19 D.L.R. 677, followed.....	710	Hovey v. Whiting, 14 Can. S.C.R. 515, followed.....	51
Harriet, The (1861), Lush 285, followed.....	617	Howard v. Burrows, 7 Man. L.R. 181, distinguished.....	627
Harrington v. Victoria Graving Dock Co., 3 Q.B.D. 549, followed.....	143	Howard v. Miller, 22 D.L.R. 75, applied.....	686
Harris v. G.W.R. Co., 1 Q.B.D. 534, applied.....	714	Howe v. Smith, 27 Ch.D. 89, applied.....	610
Harris, R. v., 18 Can. Cr. Cas. 392, followed.....	204	Hudson, Re, 54 L.J. Ch. 811, distinguished.....	133
Hartcup v. Bell, Cab. & El. 19, followed.....	408	Hughes, R. v., 2 Q.B.D. 614, distinguished.....	647
Hartt v. Edmonton Steam Laundry Co. 2 A.L.R. 130, applied.....	362	Huguenin v. Baseley, 14 Ves. 273, followed.....	153
Haug Bros. v. Murdock, 25 D.L.R. 666, reversed.....	603	Hull Electric Co. v. Clement, 41 Can. S.C.R. 419, followed.....	18
Hay v. Lacoste, 8 O.W.N. 196, affirmed.....	535	Hunt v. Beck, 22 D.L.R. 913, reversed in 34 O.L.R. 609.....	718
Hayes v. Ottawa Electric R. Co., 8 O.W.N. 407, reversed.....	644	Huntly v. Gaskell, [1906] A.C. 56, applied.....	244
Hayward, R. v., 6 Can. Cr. Cas. 399, applied.....	646	Hurst v. Picture Theatre Ltd., [1915] 1 K.B.1, followed.....	16
Head's Trustees, Re, 45 Ch.D. 310, applied.....	700	Ibrahim v. The King, [1914] A.C. 599, applied.....	280
Healy v. Ross, 32 O.L.R. 184, reversed.....	245	Ibrahim v. The King, [1914] A.C. 616, applied.....	732
Heinrichs v. Wiens, 21 D.L.R. 68, affirmed.....	155	Imperial Elevator & Lumber Co. v. Kuss, 9 W.W.R. 164, varied.314, 381, 740	740
Heinze, Re, 20 B.C.R. 99, affirmed.....	655	Independent Order of Foresters, Re, 13 W.L.R. 409, followed.....	195
Henderson v. Henderson, 3 Hare 114, applied.....	387	Inchbald v. Western, etc., Co., 34 L.J.C. P. 15, followed.....	90
Heron v. Lalande, 22 D.L.R. 37, affirmed.....	663	Innes v. Munro, 1 Ex. 473, followed.....	77
Herzfeld, Re, 46 Que. S.C. 281, disapproved.....	13	Irnham v. Child, 1 Bro. C.C. 92, approved.....	133
Hibben v. Collister, 30 Can. S.C.R. 459, followed.....	538	"Iroquois," The, 194 U.S.R. 240, followed.....	624
Hicks v. Faulkner, 46 L.T.R. 127, applied.....	437	Irvine v. Hervey, 13 D.L.R. 868, affirmed.....	578
Hicks v. Laidlaw, 2 D.L.R. 460, applied.....	694	Irvine v. Webster, Doe d., 2 U.C.Q.B. 224, followed.....	265
Higgins v. Woodhall, 6 T.L.R. 1, followed.....	638	Isaacson v. Harwood, 3 Ch. App. 224, applied.....	665
Hill, R. v., 7 Can. Cr. Cas. 38, followed.....	679		

Isa-Ket.]	COLUMN
Isaacson v. New Grand Ltd., [1903] 1 K.B. 539, applied.....	383
Ivat v. Finch, 1 Taunt 141, applied.....	280
Jackson v. Bank, 9 Man. L.R. 75, applied.....	80
Jackson v. C.P.R. Co., 24 D.L.R. 380, affirmed.....	216
Jackson v. McLellan, 19 N.B.R. 494, not followed.....	24
Jackson v. Scott, 1 O.L.R. 488, applied..	708
Jacobs v. Booth's Distillery Co., 85 L.T. 262, followed.....	385
James, Ex parte, L.R. 9 Ch. 609, followed.....	478
James v. Town of Bridgewater, 20 D.L.R. 799, affirmed.....	505
Jamieson Caveat, Re, 10 D.L.R. 490, followed.....	414
Jaques v. Millar, 6 Ch.D. 153, applied..	690
Jarvis, R. v., 20 Cox. C.C. 249, distinguished.....	1
Jasper Liquor Co., Re, 23 D.L.R. 41, affirmed.....	177
John Deere Plow Co. v. Wharton, 18 D.L.R. 353, [1915] A.C. 330, applied.....	126
John Deere Plow Co. v. Tweedy, 15 D.L.R. 513, distinguished.....	50
John Deere Plow Co. v. Wharton, 18 D.L.R. 353, distinguished.....	193
Johnston v. Great West. R. Co., [1904] 2 K.B. 250, applied.....	216
Jones v. Barnett, [1900] 1 Ch. 370, followed.....	467
Jones v. Burgess, 43 N.B.R. 126, varied.....	515, 688
Jones v. C.P.R. Co., 5 D.L.R. 332, applied.....	448
Jones v. Gardiner, [1902] 1 Ch. 191, applied.....	690
Jones v. Henderson, 3 Man. L.R. 433, applied.....	80
Jones v. Liverpool, 14 Q.B.D. 890, distinguished.....	510
Jordeson v. Sutton, etc., Co., [1899] 2 Ch. 217, applied.....	5
Joss v. Fairgrieve, 32 O.L.R. 117, followed.....	554
Jung Lee, R. v., 22 Can. Cr. Cas. 63, followed.....	204
Justices, The King v , 2 Ir. Rep. 293, applied.....	39
Keay v. City of Regina, 6 D.L.R. 327 distinguished.....	533
Keefe, R. v., 5 Can. Cr. Cas. 122, followed.....	204
Keeler, Re, 32 L.J. Ch. 101, disapproved.....	485
Kehr, R. v., 11 Can. Cr. Cas. 52, applied.....	617
Kelly v. Winnipeg, 12 Man. L.R. 87, approved.....	499
Kemball v. Hamilton, 4 A.C. 504, applied.....	390
Kennerley v. Hextall, 18 D.L.R. 375, varied.....	90
Kent v. Elstob, 3 East 18, followed.....	41
Ketcheson & C.N.O.R. Co., Re, 1 D.L.R. 854, followed.....	45

Kid-Law.]	COLUMN
Kidd v. Harris, 3 O.L.R. 60, followed ...	442
Kildonan & St. Andrew's Election, Re, 21 D.L.R. 389, affirmed.....	254
Kilmer v. B.C. Orchard Lands Co., 10 D.L.R. 172, distinguished.....	610, 631
King v. Victoria Ins. Co., [1896] A.C. 250, followed.....	48
King v. Wilson, 11 B.C.R. 109, applied..	551
King, The v. The "Despatch," 23 D.L.R. 351, reversed.....	8
King, The, v. Justices, 2 Ir. Rep. 293, applied.....	39
King, The, v. Lynch, [1903] 1 K.B. 444, followed.....	13
King, The, v. Macpherson, 15 Can. Ex. 215, followed.....	258
King, The, v. Sunderland Justices, [1901] 2 K.B. 357, 364, applied.....	39
King, The, v. Tweedie, 22 D.L.R. 498, reversed.....	9, 12, 246, 570
Kingsland, Re, 7 P.R. (Ont.) 460, approved.....	685
Kirk, Re; Nicholson v. Kirk, 52 L.T. 346, followed.....	723
Kirk v. Toronto, 8 O.L.R. 730, followed.....	510
Klukas v. Thompson Co., 21 D.L.R. 312, reversed.....	510
Koch v. Pennsylvania R. Co., 10 I.C. C.R. 675, followed.....	100
Koop v. Smith, 20 D.L.R. 440, reversed.....	304
Krom v. Kaiser, 18 D.L.R. 226, reversed.....	415, 634
Lachance v. Cauchon, 24 Que. K.B. 421, appeal quashed in 52 Can. S. C.R. 223.....	349
Lacroix, Re, 12 Can. Cr. Cas. 297, followed.....	204
Laird v. Pim, 7 M. & W. 474, applied....	708
Lake of the Woods Milling Co. v. Collin, 13 Man. L.R. 154, followed.....	309
Lakeside Provincial Election; Tidsbury v. Garland, 20 O.L.R. 286, affirmed.....	252, 254
Lamb v. Evans, [1893] 1 Ch. 218, applied.....	403
Lambert v. Rowe, [1914] 1 K.B. 38, applied.....	379
Lamontagne v. Quebec R., L., H. & P. Co., 23 Que. K.B. 212, reversed.....	509
Landes v. Kusch, 24 D.L.R. 186, applied.....	708
Landes v. Kusch, 19 D.L.R. 520, reversed.....	553, 708
Langlois, R. v., 23 Can. Cr. Cas. 43, disapproved.....	308
Lapointe, R. v., 4 D.L.R. 210, applied..	676
Larkin v. Larkin, 32 O.R. 80, approved ..	474
Lavery v. Purcell, 39 Ch. D. 508, followed.....	139
Lawler v. City of Edmonton, 29 W.L.R. 661, followed.....	446
Lawrence's Case, L.R. 2 Ch. App. 421, applied.....	705
Lawrence v. McDowell, Ber. [442] 283, followed.....	83
Lawson v. Powers; Re Murray Canal, 6 O.R. 685, followed.....	442

Rod-Rud.]	COLUMN	Run-Sar.]	COLUMN
Rodier v. Meehan.....	137	Rundle, Re.....	20
Rogers, Re.....	328, 412	Rural Mun. of Fertile Belt, Re.....	719
Rogers v. City of Toronto.....	499	Rushworth v. Johnston.....	565
Rogers v. Wylie.....	611	Rusk, McBride v.....	72
Rogers Lumber Yards v. Methodist Church of Brock.....	595	Russell, Re.....	726
Rohl v. Pfaffenroth.....	469, 595	Russell, Constable v.....	683
Roland Polgreen, Re.....	340, 414	Russell v. Quaker Oats Co.....	115
Rollefson Bros. v. Olson.....	409	Rutherford, Re.....	292
Rolph & Clark Ltd. v. Goldman.....	134	Rutherford, K. & S. Auto Tire Co. v.....	315
Rolph v. Villeneuve.....	607	Rutherford v. Taylor.....	385
Rolston, National Mortgage Co. v.....	467, 593	Ryckman, Foster v.....	238
Rolt v. Griese & Wood.....	703	Ryder, Pedlar v.....	691
Romano, The King v.....	34, 679	Rydstrom v. Krom.....	13
Romer, R. v.....	202, 203, 637, 649	Rymal v. McGill.....	539
Ronald v. Lillard.....	479, 709	Ryser v. Ryser.....	346
Roray v. Howe Sound.....	163	Sager v. Man. Windmill Co.....	152, 302
Rosborough, Receiver-Gen'l of N.B. v.....	665	Saindon v. The King.....	215, 224, 430
Roseoni v. Péladeau.....	420	St. Alice, The, Cowan v.....	617
Rose, Hancock v.....	392	St. Charles v. Monette.....	55, 608
Rose v. Mahoney.....	87	St. Croix Paper Co., Clark v.....	31
Rose v. Rose.....	685, 687	St. Denis v. Quevillon.....	402
Rose, Willett v.....	560	St. Denis, Village of, Chaput v.....	424
Rose & Hamilton, Grimsby & Beams-ville R. Co., Re.....	575	St. James Ltd., Westholme Lumber Co. v.....	142
Ross, Hanson v.....	518, 519	St. Jean v. Laurin.....	76
Ross, Healy v.....	245	St. John v. Board of Valuers.....	656, 660
Ross v. New Brunswick Construction Co.....	478	St. John, City of, Howard v.....	354
Ross, Scrim Lumber Co. v.....	77	St. John, City of, St. John R. Co. v.....	24, 641
Rosthern, Can. North. Express Co. v.; Same, Can. North. Telegraph v.....	660, 663, 664	St. John & Quebec R. Co. v. Anderson.....	40
Rosthern Election Petition, Re.....	250	St. John & Quebec R. Co. v. Fraser Ltd.....	27, 34, 218
Rothesay Park Co. v. Montgomery Bros.....	87, 564	St. John & Quebec R. Co. v. Hibbard Co.....	578
Roubert, Campbell v.....	479	St. John & Quebec R. Co., Turney v.....	43
Roundy v. Salinas.....	394	St. John R. Co. v. City of St. John.....	24, 641
Rourke, Re.....	339, 340	St. John R. Co., Merritt v.....	463
Rourke, Concrete Appliances Co. v.....	541	St. Lawrence Furniture Co. v. Binet.....	165
Rousseau v. Heirs of A. J. Dubuc.....	612	St. Mary's Young Men's Society, Herschorn v.....	406
Rousseau, Quebec Development Co. v.....	19	St. Maurice Sand Co. v. Brault.....	50
Rousseau, R. v.....	649	St. Onge, Ex parte Beloni,.....	109
Rousseau v. Raymond.....	121	St. Pierre v. Girard.....	4
Rousseau, Simard v.....	401	St. Pierre v. Rekert.....	183, 467
Routhier v. L'Alliance Nationale.....	68	St. Pierre of Verone, Corp. of, Lamothe v.....	502
Routtenberg, Macey Sign Co. v.....	145, 599, 603	St. Roch Hotel Co. v. Barbeau.....	171, 277
Rowan, Paitson v.....	185	St. Roch Hotel, Brasserie Champlain v.....	602
Rowland v. City of Edmonton.....	226	Ste. Rose, Village de, Desjardins v.....	19
Rowland, Publishers Ass'n v.....	601	Salaberry, City of, Bourassa v.....	249
Rowluk, R. v.....	206	Sale, Loveland v.....	685
Roy v. Barbeau.....	145	Salinas, Roundy v.....	394
Roy v. Can. Passenger Ass'n.....	105	Sam Jon, R. v.....	94, 198
Roy v. Fortin.....	52, 294	Samson v. Larochelle.....	10
Roy v. La Caisse des Familles.....	163	Sanders v. Hedman.....	304
Roy, Veilleux v.....	230	Sanderson, Re.....	728
Royal Bank v. Ball & Whieldon.....	66, 114, 115	Sands, R. v.....	240
Royal Bank, Cameron v.....	64	Sandwich, Windsor & Amherstburg R. Co., Curry v.....	642
Royal Bank v. Hickney.....	75	Sandwich, Windsor & Amherstburg R. Co., Keech v.....	511
Royal Bank v. Lee & Girard.....	37, 309, 492	Sandwich, Windsor & Amherstburg Co., Lord v.....	520
Royal Fish v. Maritime Fish.....	611	Sandwich, Windsor & Amherstburg R. Co., Mitchell v.....	351
Royal Paper Box Co. v. Canada Cement Construction Co.....	175	Sandwich, Windsor & Amherstburg R. Co., Seguin v.....	642
Royal Trust v. Holden.....	621	Saraguay Electric & Water Co., Audet v.....	208
Royal Trust Co. v. Keating.....	410		
Royal Trust Co. v. Lloyd.....	336		
Royce Ave. Crossing (Toronto), Re.....	585		
Ruddy & Toronto Eastern R. Co., Re.....	220		
Rudolph v. Continental Life Ins. Co.....	364		
Rudyk v. Shandro.....	215, 250, 437, 438, 559, 678		

Vic-Wel.]	COLUMN	Wem-Wil.]	COLUMN
Victoria Saanich Co. v. Wood Motor Co.		Wemp, Re.	727
Vidal, Re.	183, 213	Wentzell v. New Brunswick &c. R. Co.	282, 453, 461
Viger Park Co., Courchene v.	162, 166, 172	Werner, Gauthier v.	607
Vigneault, Martel v.	335	West Canada Pub. Co., Arsenych v.	240
Vilandre v. Allie.	170	West, R. v.	522
Village of, (Indexed under name)		West v. Sask. General Trust Corp.	54
Villemaire v. Caron.	227	West v. Shun.	50, 406, 566
Villeneuve, Rolph v.	607	West Vancouver, Ramsay v.	260
Viola v. Mackenzie, Mann & Co.	13	Westbury v. Sherbrooke.	659
Violette, Gordon v.	392	Western Canada Fire Ins. Co., Re.	167, 168, 197
Vivian v. Clergue.	710	Western Canada Flour Mills Co. v.	
Vivian, Douglas v.	18, 288, 411	Crown Bakery.	601
Vogel v. McLeod.	3	Western Canada Flour Mills, Pescovitch	517
Vokes, Rankin v.	552	Western Canada Power Co., Bergklint v.	448
Volcanic Oil & Gas Co. v. Chaplin.	190	Western Jobbers, Northern Elevator v.	62
Vondette v. Vondette.	720, 721	Western Motors Ltd. v. Gilfoy.	34, 536
Von Mackensen v. Dist. of Surrey.	324	Western Ontario Munic. v. G.T., M.C.	
Vulcan Trade-mark, Re.	197, 671, 672, 673	& P.M. R. Cos.	102, 103
Wabash R. Co., Ball v.	451	Western Security Bank v. Martin.	384
Wabash R. Co., Gray v.	584	Western Trust Co. v. Duncan.	223
Wade v. Crane.	138	Western Trust Co. v. City of Regina.	454
Wagner, Re.	343, 546	Westholme Lumber Co. v. St. James	
Walcott v. Walcott.	242	Ltd.	142
Waldner, Can. Bank of Commerce v.	64	Westminster Woodworking Co. v. Stuy-	
Walker v. Booth.	231	vesant Ins. Co.	356
Walker v. Brown.	588	Westport Mfg. Co., McCammon v.	175
Walker v. Card.	368	Westwood & U. S. Fidelity & Guaranty	
Walkey v. Yurtas.	489	Co., Ramsay v.	50
Wall v. Cape.	453	Wetlaufer, McMullen v.	437
Wallace, Re.	724	Wetmore, Globe & Rutgers Fire Ins. Co.	
Wallace v. City of Windsor.	326	v.	210, 355, 562
Wallace v. Clapp.	117	Wettlaufer, Standard Bank v.	74, 276
Wallace v. Gummerson.	706	Weyburn Security Bank v. Martin &	
Wallace, R. v.	279, 344, 669	Diemert.	385
Waller v. The King.	23	Whalen, Revillon v.	305
Walsh, Can. Pac. R. Co. v.	33	Whaley v. Linnenback.	468
Walter v. Adolph Lumber Co.	352	Wheatley v. City of Calgary; Lusk v.	
Walter v. Leduc.	80, 178, 612	City of Calgary.	324
Walters, Meriden Britannia Co. v.	128, 129	Wheatley, Dunn v.	335
Walton, Stonehouse v.	153	Wheeler v. Chapman.	528
Ward, Re.	728	Whelan v. Town of Aylmer.	660
Ward, Ottawa Forwarding Co. v.	99	Whitchurch, Tp. of, Linstead v.	325
Wardle, Re.	346	White v. T. D. Cavanagh, Ltd.	376
Warren v. Cairns.	487	White v. Dunning.	46, 341
Warren, De Sable Union v.	611	"White", The, Farrell v.	616
Warren & Dyett, Rendall, Mackay,		White, R. v.	204, 206
Michie v.	464, 468, 471	White Rock Resort Dev. Co., Beseloff v.	470
Warwick Pants Manuf. Co., Pare v.	409	White, Sawyer-Massey Co. v.	408
Washington & Johnson v. Raper, etc.,		White, Silverman v.	217
Burial Co.	552	Whiteside, Re; Rex v. McInroy.	128
Waterloo Manufacturing Co. v. Barnard	592	Whitesides, Donovan v.	605
Watson, Alderson v.	410	Whitla v. Stoffel.	185
Watson Carriage Co. v. Auto-Transportation Co.	605	Whittall, Stack v.	457
Watson, Godkin v.	293	Whyte v. McTaggart.	138, 444
Watson v. Jackson.	129	Whyte v. National Paper Co.	563
Watson v. Morgan.	737	Wickham, Parish of, Rivard v.	193, 659
Webb, Victor v.	186	Wickwire v. Carver.	70
Weber, U.S. Fidelity & Guaranty Co. v.	566	Widder, Gendreau v.	535
Weddell v. Douglas.	118	Wiens, Heinrichs v.	155, 421
Weddell v. Larkin.	142	Wilkins, Poucher v.	287
Weeks v. Town of Vegreville.	500	Wilkinson v. Hayes.	396
Weir v. Hamilton Street R. Co.	643	Wilkinson, Peacock v.	86, 562
Weir, Hamilton Street R. Co. v.	643	Willett v. Rose.	560
Weiss, R. v.	342, 638	Willett Martin Co. v. Full.	126, 180
Welsh v. Toronto Police Benefit Fund.	556	William Shannon Co. v. Crane.	349
Weltz v. Hoy.	604	Williams v. Black.	274, 621, 633, 707

Oak-Pea.]	COLUMN	Pea-Qui.]	COLUMN
Oakes v. Turquand, L.R. 2 H.L. 325, distinguished.....	170	Pearce v. Brooks, L.R. 1 Ex. 213, applied.....	356
Oland v. McNeil, 32 Can. S.C.R. 23, distinguished.....	482	Pearson v. Benson, 28 Beav. 598, followed.....	482
Oldfield v. Barbour, 12 P.R. 554, followed.....	465	Pearson v. Dublin Corp., [1907] A.C. 351, applied.....	560
Oliver v. G.W.R. Co., 28 U.C.C.P. 143, distinguished.....	97	Pember, R. v., 3 O.W.N. 1216, followed.....	498
Olley v. Fisher, 34 Ch.D. 367, followed.....	630	Pennington v. Taniere, Doe d., 12 Q.B. 998, followed.....	403
Olsen v. Desjarlais, 15 W.L.R. 72, followed.....	476	Penrose v. Knight, Cout. Dig. 1122, applied.....	36
Olver v. Winnipeg, 16 D.L.R. 340, applied.....	516	Penysflog Mining Co., Re, 30 L.T.R. 861, applied.....	175
Ontario Gravel Freighting Co. v. The "A. L. Smith," 22 D.L.R. 488, affirmed.....	6, 8, 623	People v. Hopson, 1 Denio N.Y. 573, approved.....	527
Ontario Ins. Act & Sup. Leg. Select Knights, Re, 31 Ont. R. 154, distinguished.....	68	Peppiatt v. Peppiatt, 34 O.L.R. 121, affirmed on appeal.....	125, 442
Ontario Lime Ass'n v. Grimwood, 22 O.L.R. 17, distinguished.....	465	Percy v. Glasco, 22 U.C.C.P. 521, 526, followed.....	47
Ontario & Manitoba Flour Mills v. C.P. R. Co., 16 Can. Ry. Cas. 430, followed.....	100	Perry v. Patterson, 2 Pug. 367, followed.....	83
Orr v. Robertson, 23 D.L.R. 17, distinguished.....	466	Peterborough West Election Case (Stratton v. Burnham), 41 Can. S.C.R. 410, followed.....	738
"Osceola," The, 189 U.S.R. 175, followed.....	624	Peto, R. v., 1 Y. & J. 37, 52, followed.....	148
Ottawa & New York R. Co., and Tp. of Cornwall, Re, 23 D.L.R. 610, affirmed.....	660, 716	Phelan v. G.T.P.R. Co., 12 D.L.R. 347, affirmed.....	452
Owen v. James, 4 Terr. L.R. 174, followed.....	146	Phillips v. L. & S.W.R. Co., 5 Q.B.D. 78, applied.....	216
Pacific Cable R. Co. v. Butte City Street R. Co., 55 Fed. R. 764, followed.....	541	Pickering v. G.T.P.R. Co., 24 Man. L.R. 544, applied.....	398
Packham v. Gregory, 4 Hare 396, followed.....	728	Pickering v. G.T.P.R. Co., 50 Can. S.C.R. 393, applied.....	398
Page v. Morgan, 15 Q.B.D. 228, followed.....	134	Pilling v. Stewart, 4 B.C.R. 94, applied.....	294
Paget v. Ede, L.R. 18 Eq. 118, applied.....	192	Pinke v. Bornhold, 8 O.L.R. 575, disapproved.....	594
Pakenham Pork Packing Co., Re, 12 O.L.R. 100, applied.....	179	Pletts v. Campbell, [1895] 2 Q.B. 229, distinguished.....	379
Paladino v. Gustin (1897), 17 P.R. (Ont.) 553, distinguished.....	422	Poirier v. Archambault, 23 Que. K.B. 495, affirmed.....	139
Park v. Schneider, 6 D.L.R. 451, distinguished.....	232	Pole v. Leask, 33 L.J.Ch. 161, followed.....	265
Parkdale v. West, 12 A.C. 602, followed.....	262	Porter v. Freudenberg, [1915] 1 K.B. 857, followed.....	13, 14
Parker v. Capital Life Ass. Co., 22 D.L.R. 325, affirmed.....	362	Porter v. McManus, 25 N.B.R. 215, applied.....	295
Parkes v. St. George, 10 A.R. (Ont.) 496, followed.....	114	Poucher v. Wilkins, 21 D.L.R. 444, distinguished.....	430
Parry v. Sherwood, 7 W.W.R. 1244, applied.....	658	Poulton v. Lattimore, 9 B. & S. 259, followed.....	604
Partington v. Hawthorne, 52 J.P. 807, applied.....	389	Powell v. Crow's Nest Pass Coal Co., 23 D.L.R. 57, affirmed.....	459, 463
Paskwan v. Toronto Power Co., 15 D.L.R. 752, affirmed.....	449	Powell v. Evan Jones, [1905] 1 K.B. 11, applied.....	705
Pastoral Finance Ass'n v. The Minister, [1914] A.C. 1083, applied.....	220	Preston & Berlin Street R. Co. v. G.T.R. Co., 6 Can. Ry. Cas. 142, followed.....	257
Patterson v. Palmer, 4 S.L.R. 487, applied.....	115	Price v. Chicoutimi Pulp Co., 22 Que. K.B. 393, affirmed.....	421, 422
Paulson, R. v., 20 D.L.R. 787, reversed.....	477	Price v. Wade, 14 P.R. (Ont.) 351, distinguished.....	286
Payette & Quevillon v. St. Denis, 23 Que. K.B. 436, reversed.....	402	Provincial Fox Co. v. Tennant, 18 D.L.R. 389, reversed.....	136
Payne v. Meller, 6 Ves. 349, applied.....	694	Punnett, Ex parte, 16 Ch.D. 226, applied.....	486
Peacock v. Wilkinson, 18 D.L.R. 418, affirmed.....	88, 562	Quaker Oats Co. v. Denis, 19 D.L.R. 327, affirmed.....	430, 538
		Quebec R.L.H. & P. Co. v. Vandry, 24 Que. K.B. 214, reversed.....	255, 365, 509
		Quinn v. Leatham, [1901] A.C. 495, distinguished.....	155

Rab-Ref.]	COLUMN
Rabinovitch, R. v., (No. 1), 21 D.L.R. 600, affirmed on this point	618
Rackham v. Marriott, 2 H. & N. 196, followed	431
Rae v. McDonald, 13 O.R. 352, followed	303
Rae, R. v., 23 Can. Cr. Cas. 266, applied	61
Raikes v. Townsend, 2 Smith 9, followed	521
Rand, Reg. v., L.R. 1 Q.B. 230, applied	39
Randall v. Ahearn & Soper, 34 Can. S.C.R. 698, applied	454
Rattray v. Young, Cout. Dig. 1123, applied	36
Ray v. Willson, 45 Can. S.C.R. 401, distinguished	72
Raymond v. Hay, 3 N.B.R. 99, distinguished	369
Raynor v. Toronto Power Co., 22 D.L.R. 578, reversed	448
Reese River Silver Mining Co. v. Smith. L.R. 4 H.L. 64, applied	166
Reeve v. Mullen, 14 D.L.R. 345, followed	151
Regina (Indexed under name of defendant).	
Regina Public School v. Gratton Separate School, 18 D.L.R. 571, reversed	616
Retailer Merchants Ass'n, Re, 15 D.L.R. 890, overruled	166
Revelstoke Saw Mill Co. v. Alberta Bottle Co., 21 D.L.R. 779, affirmed	470, 473, 474, 475
Rex (Indexed under name of defendant).	
Reynolds v. Crawford, 12 U.C.Q.B. 168, applied	694
Rice v. Sockett, 8 D.L.R. 84, followed	44
Rice Lewis & Sons v. Harvey, 9 D.L.R. 114, followed	464
Richardson v. Gray, 29 U.C.Q.B. 360, applied	80
Richelieu Election Case, 21 Can. S.C.R. 168, distinguished	252
Riddell v. Riddell, 5 W.W.R. 241, followed	243
Ritchie v. Jeffrey, 21 D.L.R. 851, affirmed	49
Roach v. McLachlan, 19 A.R. 496, distinguished	287
Roach v. McLachlan, 19 A.R. (Ont.) 496, followed	306
Robert Ward & Co. v. Wilson, 13 B.C.R. 273, not followed	57, 310
Roberts v. Bell Telephone, 10 D.L.R. 459, applied	255
Robertson v. City of Montreal, 52 Can. S.C.R. 30, 26 D.L.R. 288, leave to appeal refused	497
Robertson v. Skelton, 12 Beav. 260, applied	694
Robinson v. G.T.R. Co., 12 D.L.R. 696, reversed	99, 101
Robinson v. Harris, 21 O.R. 43, distinguished	696
Robinson v. Morris, 15 O.L.R. 649, followed	38
Rochefoucauld v. Boustead, [1897] 1 Ch.D. 196, applied	685
Roff v. Kreckler, 8 Man. L.R. 230, applied	611

Ros-Sco.]	COLUMN
Rose v. McLean Publishing Co., 27 O.R. 325, distinguished	156
Rose v. Savoie-Guay, 7 D.L.R. 205, followed	285
Rosio v. Beech, 9 D.L.R. 416, applied	470
Ross v. Hunter, 7 Can. S.C.R. 289, followed	592
Rosthern Election Petition, 31 W.L.R. 184, reversed	250
Rowland v. Edmonton, 20 D.L.R. 36, reversed	225, 226
Rowland v. Town of Collingwood, 16 O.L.R. 272, distinguished	498
Rowley v. L. & N.W.R. Co., L.R. 8 Ex. Ch. 221, applied	216
Royal Bank v. Whieldon, 22 D.L.R. 647, reversed	66
Royal Bristol v. Bomaash, 35 Ch.D. 390, applied	693
Rubber & Produce Investment Trust, Re, [1915] L.R. 1 Ch. 382, applied	178
Rudd v. Manahan, 5 A.L.R. 34, followed	630
Rudyk v. Shandro, 21 D.L.R. 266, followed	250
Rudyk v. Shandro, 21 D.L.R. 250, reversed	250
Rundle, Re, 32 O.L.R. 312, affirmed	20
Russell, Re, 29 Ch.D. 254, followed	566
Russell v. Darwin, 2 Bro. C.C. (n) 689, followed	403
Russell v. French, 28 O.R. 215, followed	464
Russo-Chinese Bank v. Li Yau Sam, [1910] A.C. 174, distinguished	560
Rutledge v. U.S. Savings & Loan Co., 37 Can. S.C.R. 546, applied	123
Ryan, etc., Re, 21 O.L.R. 582, applied	372
Ryan, R. v., 9 Can. Cr. Cas. 347, applied	280
Rylands v. Fletcher, L.R. 3 H.L. 330, applied	447
Sachs v. Spielman, 37 Ch.D. 295, applied	549
Sack v. Construction Co., 7 W.L.R. 653, applied	551
Sager v. Manitoba Windmill Co., 13 D. L.R. 203, affirmed	152, 203
St. Clair, Reg. v., 27 A.R. 308, applied	240
St. Clair v. Whitney, 38 Can. S.C.R. 303, distinguished	7
St. John & Que. R. Co. v. C.P.R. Co., 14 Can. Ry. Cas. 360, followed	257
St. Pierre, R. v., 4 O.L.R. 76, followed	498
St. Pierre, Town of, v. G.T.R. Co.; Simplex Ave. Crossing Case, 13 Can. Ry. Cas. 1, followed	322
Sam Sing, R. v., 17 Can. Cr. Cas. 361, followed	94
Sask. Land & Homestead Co. v. C. & E. R. Co., 14 D.L.R. 193, affirmed	256, 259
Saunderson & Co. v. Clarke, 29 T.L.R. 579, followed	174
Schiever, R. v., 97 Eng. R. 551, followed	317
Schwartz v. Williams, 35 O.L.R. 33, varied	488
Scott v. Bank of New Brunswick, 23 Can. S.C.R. 277, 283, applied	144
Scott v. Burnham, 19 Gr. 234, followed	531

Tor-Uni.]	COLUMN	Uni-Vic.]	COLUMN
Toronto & York Radial R. Co. and Toronto, Re	641	Union Stockyards Co., Leadlay v.	169
Toronto & York Radial R. Co., Humber- stone v.	642	Union Trust Co. v. Chicoutimi Pulp & Wood Co.	138
Town of (Indexed under name)		Union Trust Co., Re Knickerbocker v.	589
Township of (Indexed under name)		United Gas & Fuel Co., Stables v.	511
Townsend, Harris v.	564	United Motor Co. v. City of Regina.	237
Townsend, Smid v.	458	U. S. Construction Co. v. Rat Portage Lumber Co.	466
Traders Trust & Kory, Re	165, 239	U. S. Fidelity, Can. Fairbanks Morse v.	81
Trail, Molyneux v.	347, 609	U. S. Fidelity v. Gouin	186, 238
Transcontinental Townsite Co., Re; Plainview Farming Case	173, 186	U. S. Fidelity & Guaranty Co., Arnprior v.	82
Transcontinental Townsite Co., Plain- view Farming Co. v.	192, 532, 700	U. S. Fidelity & Guaranty Co., Foster v.	36
Traunweiser v. Johnson.	285, 711	U. S. Fidelity & Guaranty Co., McPherson v.	81, 139, 286
Travato v. Dominion Cannery.	462	U. S. Fidelity & Guaranty Co. v. Weber.	566
Treasurer of Manitoba, Standard Trusts Co. v.	127, 665	Upton, Duff v.	4, 627
Treasurer of Ontario v. Canada Life Ass. Co.	127	Upton, R. v.	200
Treloar, Clark v.	549	V. V., E.R. & N. R. Co., Vancouver, v.	323, 575
Trembly, Michaud v.	459	Valiquette, Damphousse v.	210
Trenholm v. Dominion Express Co.	99, 279, 731	Valiquette v. Gagnon	601
Trepannier v. Lalonde	706	Valiquette, Stonehouse v.	607
Trevarton, Crozier v.	408	Valliant, Cormier v.	321, 328
Truax, Crawford v.	254	Van Aalst, Gier v.	86
Trudeau v. Beaudet	277, 549	Vanasse, Hamelin v.	65
Trudel, Aaron v.	57	Vanasse v. Robillard	689
Trudel v. Marquette	591, 632	Van Camp v. Freeman	245
Truesdale, Dyet v.	385	Vancouver Breweries, Dana & Fullerton v.	404
Trustees of the Church of Our Lord, City of Victoria v.	656, 662	Vancouver Exhibition Ass'n, Lund v.	148
Trusts & Guarantee Co. v. Boal	233	Vancouver Lumber Co., Col. Bitulithic Co. v.	161
Trusts & Guarantee Co., Foster v.	54	Vancouver v. V.V., E.R. & N.R. Co.	323, 575
Trusts & Guarantee Co. v. Grand Valley R. Co.	579, 588	Van den Berg, Re Mulholland &	721
Trusts & Guarantee Co., Metals Ltd. v.	471	Vandry, Quebec R.L.H. & P. Co. v.	255, 365, 509
Trusts & Guarantee Co. v. Smith	238, 312	Van Every, Re	726
Tucker v. Jones	279, 632, 633	Van Horst, R. v.	279
Tuckersmith, Tp. of, Jones v.	247, 328, 329, 495	Vanier v. Bonenfant	409
Turngeon v. The King	454	Vansickle v. James	246
Turnbull v. Rur. Mun. of Pipestone	39, 40, 41	Vansickler, McKnight Construction Co. v.	160, 161
Turner v. McGavin	695	Van Walleghen, Reyneurt v.	603
Turner & Robinson, Kilbuck Coal Co. v.	138	Van Zonnefeld v. Gilchrist	601
Turney v. St. John & Que. R. Co.	43	Varley v. Commonwealth Trust Co.	629
Tutty v. Heller	488, 489	Varlow Foundries Ltd., Braden v.	142
Tweedie, The King v.	9, 12, 246, 570	Vaughan v. Parker	244
Twin City Ice Co. v. City of Ottawa	719	Vegreville, Town of, Weeks v.	500
Twiss v. Curry	48	Veilleux v. Boulevard Heights	26, 700
Two Creek Grain Growers' Ass'n v. C.P.R. Co.	104	Veilleux v. Roy	230
Tyndall, Bolton v.	562	Vellie, Ripley v.	72
Tyrrell v. Verral	401	Vendetti, Benoit v.	188
Tyson, Union Bank v.	305	Venness v. Stoddard	465, 477
Ullerich, Ormiston v.	553	Verdon, Barre v.	188
Underhill v. C.N.R. Co.	577	Verral, Tyrrell v.	401
Union Assurance Co. v. B.C. Electric R. Co.	48, 427	Versailles, etc., Beauchemin v.	21
Union Bank v. Dodds	70	Versailles v. Harel	182, 382
Union Bank, Knowlton v.	30	Vézina v. Lafortune	143, 418
Union Bank v. Lumsden Milling Co.	483	Vézina v. Laperle	510
Union Bank v. Makepeace	315	Vick v. Morin & Thompson	512, 514
Union Bank v. McKillop	161	Vick, Wirta v.	56
Union Bank, Re Payne and	54	Victor v. Webb	186
Union Bank v. Taylor	306	Victoria, Halpin v.	299
Union Bank v. Tyson	305	Victoria, City of, Hanna v.	429
		Victoria, City of, v. Trustees of the Church of Our Lord	656, 662

Ten-Tor.]	COLUMN
Tennent v. City of Glasgow Bank, L.R. 4 A.C. 615, distinguished.....	170
Tew v. Toronto Savings & Loan Co., 30 Ont. R. 76, followed.....	409
Theo Noel Co. v. Vitae Ore Co., 7 W.L.R. 353, applied.....	551
Thibaudeau v. Paul, 26 O.R. 385, followed.....	55
Thomas v. Grace, 15 U.C.C.P. 462, applied.....	133
Thompson, Re, 44 Ch.D. 492, applied.....	700
Thompson v. Brown, 1 M. & M. 40, applied.....	536
Thompson v. Coulter, 34 Can. S.C.R. 261, applied.....	292
Thompson v. McDonald, 20 B.C.R. 223, applied.....	692
Thompson, R. v., 100 L.T. 970, applied.....	649
Thompson, R. v., [1893] 2 Q.B. 12, applied.....	280
Thompson, R. v., [1909] 2 K.B. 614, applied.....	381
Thomson v. Dymont, 13 Can. S.C.R. 303, distinguished.....	600
Tidsbury v. Garland; Lakeside Provincial Election, 20 D.L.R. 286, affirmed.....	252, 254
Till v. Town of Oakville, 21 D.L.R. 113, followed.....	185
Till v. Town of Oakville, 31 O.L.R. 405, followed.....	532
Till v. Town of Oakville, 20 D.L.R. 635, varied.....	283
Tobin v. Murison, 5 Moore P.C. 110, followed.....	678
Todd v. Reid, 4 B. & Ald. 210, followed.....	560
Toller v. Carteret, 2 Vern. 494, applied.....	192
Tomlinson v. Hill, 5 Gr. (Ont.) 231, applied.....	662
Tomlinson v. Hill, 5 Gr. 231, followed.....	663
Toronto & Brampton v. G.T. & C.P.R. Cos.; Brampton Commutation Rates Case, 11 Can. Ry. Cas. 370, followed.....	95
Toronto & York Radial R. Co. v. City of Toronto, 25 O.W.R. 315, applied.....	641
Toronto, City of, v. Bell Telephone Co., [1905] A.C. 52, followed.....	257
Toronto, City of, v. Metropolitan R. Co., (1900), 31 O.R. 367, applied.....	640
Toronto, City of, v. Toronto R. Co., 5 O.W.R. 130, 132, affirmed in Toronto R. Co. v. Toronto Corp., [1906] A.C. 117, followed.....	641
Toronto Electric Light Co. v. Toronto, 20 D.L.R. 953, reversed.....	501
Toronto General Trusts v. Gordon, Mackay & Co., 21 D.L.R. 394, reversed.....	137
Toronto R. Co. v. City of Toronto, [1906] A.C. 117, applied.....	367
Toronto R. Co., R. v. (No. 1), 18 Can. Cr. Cas. 417, affirmed on appeal.....	521
Toronto Railway v. Toronto, [1904] A.C. 809, distinguished.....	664
Toronto Suburban R. Co. v. City of Toronto, 13 D.L.R. 674, reversed.....	640
Toronto Telephone Co. v. Bell Telephone Co., 2 Can. Ex. 495, followed.....	541

Tre-War.]	COLUMN
Trevor v. Whitworth, 12 A.C. 409, distinguished.....	159
Trinidad, etc., Co. v. Ambard, [1899] A.C. 594, applied.....	5
Trudel, R. v., 19 D.L.R. 270, followed.....	260
Trust & Loan Co. v. Lawrason, 10 Can. S.C.R. 679, applied.....	487
Tuckett, R. v., 1 Cox C.C. 103, applied.....	200
Turgeon v. The King, 15 Can. Ex. 331, affirmed.....	454
Turner v. Fuller, 12 D.L.R. 255, applied.....	470
Turner v. Postmaster-General, 5 B. & S. 756, distinguished.....	647
Tweedie, The King v., 22 D.L.R. 498, reversed.....	9, 12, 246, 570
Twin City Transfer Co. v. C.P.R. Co., 15 Can. Ry. Cas. 323, followed.....	107
Tytler v. C.P.R. Co., 26 A.R. (Ont.) 467, followed.....	713
Udny v. Udny, L.R. 1 Sc. App. 441, applied.....	243
Underhill v. C.N.R. Co., 22 D.L.R. 279, followed.....	271
Underwood, Re, 3 K. & J. 745, distinguished.....	485
Union Bank v. MacCullough, 7 D.L.R. 694, followed.....	73
Union Bank v. McKillop, 16 D.L.R. 701, affirming 11 D.L.R. 449, affirmed.....	160
Vadeboncoeur v. City of Montreal, 29 Can. S.C.R. 9, distinguished.....	592
Vancouver v. McPhalen, 45 Can. S.C.R. 194, distinguished.....	324
Van Meter, R. v., 11 Can. Cr. Cas. 207, applied.....	280
Vansickler v. McKnight Construction Co., 19 D.L.R. 505, affirmed.....	160
Veilleux v. Boulevard Heights, 24 D.L.R. 881, affirmed.....	26
Veilleux v. Boulevard Heights, 20 D.L.R. 858, affirmed.....	26
Veilleux v. Boulevard Heights, 20 D.L.R. 858, affirmed in 24 D.L.R. 881, followed.....	691, 700
Victor Mills, Ltd., v. Shackleton, [1912] 1 K.B. 22, followed.....	456
Vineberg v. Guardian Fire & Life Ass. Co., 19 A.R. (Ont.) 293, applied.....	39
Vivian v. Clergue, 20 D.L.R. 660, affirmed.....	710
Vousden v. Hopper, 4 S.L.R. 1, applied.....	486
Vulcan Trade Mark, Re, 22 D.L.R. 214, affirmed.....	197
Walker v. Dickson, 20 App. R. (Ont.) 96, followed.....	483
Walsh, R. v., 29 N.S.R. 531, followed.....	111
Walters v. C.P.R. Co., 1 Terr. L.R. 88, doubted.....	428
Walton v. Ferguson, 19 D.L.R. 816, followed.....	214, 222
Wampole & Co. v. F. E. Karn Co., 11 O.L.R. 619, followed.....	144, 479
Ward v. National Bank of New Zealand, 8 A.C. 755, followed.....	566

War-Wil.]	COLUMN	Wil-You.]	COLUMN
Ward v. Wilson, 13 B.C.R. 273, disapproved.....	57, 310	Wills v. McSherry, [1913] 1 K.B. 20, distinguished.....	60
Waterloo Manuf. Co. v. Barnard, 9 W.W.R. 177, affirmed.....	592	Willson v. Thomson, 19 D.L.R. 593, varied.....	485
Watrous v. Palmerston, 21 Can. S.C.R. 556, distinguished.....	496	Wilmont's Case, 10 Cr. App. R. 173, distinguished.....	677
Watkins v. Naval Colliery Co., [1912] A.C. 693, applied.....	64	Wilson v. B.C. Refining Co., 20 D.L.R. 418, reversed.....	169
Watts, R. v., 5 Can. Cr. Cas. 246, applied.....	295	Wilson v. Kearse (1800), Peake Add. Cas. 196, approved and applied.....	347
Webb, R. v., 11 Cox C.C. 133, distinguished.....	731	Wilson v. Merry, L.R. 1 H.L. Sc. 326, distinguished.....	447
Webster v. Petre, 4 Ex. D. 127, applied and followed.....	315	Winans v. Atty-Gen'l, [1904] A.C. 287, applied.....	244
Wedderburn v. Wedderburn, 22 Beav. 84, followed.....	538	Wishart v. City of Winnipeg, 4 Man. L.R. 457, followed.....	503
Weidman v. Shragge, 20 Can. Cr. Cas. 117, followed.....	479	Wolsely Tool & Motor Car Co. v. Jackson Potts & Co., 33 O.L.R. 587, affirmed.....	98
Weir v. Hamilton Street R. Co., 22 D.L.R. 155, reversed.....	643	Wolsely Tool & Motor Car Co. v. Jackson Potts & Co., 21 D.L.R. 610, affirmed.....	554, 563
Wenborn, Re, [1905] 1 Ch. 413, followed.....	186	Wood v. Grand Valley R. Co., 16 D.L.R. 361, affirmed.....	18, 154, 210
West v. Ames-Holden, 3 Terr. L.R. 17, followed.....	371	Wood v. Lang, 5 U.C.C.P. 204, distinguished.....	415
West v. Gwynne, [1911] 2 Ch. 1, followed.....	405, 637	Wood v. Ledbitter, 13 M. & W. 838, distinguished.....	16
Westaway v. Stewart, 2 S.L.R. 178, distinguished.....	76	Wood Vallance & Co., Re, 24 D.L.R. 831, varied in 52 Can. S.C.R.....	529
Western Canada v. Court, 25 Gr. 151, disapproved.....	685	Woodall, Re, 8 O.L.R. 288, distinguished.....	286
Western Tolls, Re, 17 Can. Ry. Cas. 123, pp. 148 to 156, followed.....	107	Woodberry v. Gates, 2 Thom. 255, followed.....	83
Weston, Village of, v. G.T. & C.P.R. Cos.; Denison Ave. Crossing Case, 7 Can. Ry. Cas. 79, followed.....	322	Woodley v. Harker, 7 Terr. L.R. 334, followed.....	238
Westminster Woodworking Co. v. Stuyvesant Ins. Co., 8 W.W.R. 187, affirmed.....	356	Wood's Case, L.R. 15 Eq. 236, applied.....	171
White, R. v., 1 Dears. C.C. 203, applied.....	667	Worrell, Re, (No. 1), 21 D.L.R. 519, affirmed.....	646
Whiteman v. Hawkins, 4 C.P.D. 13, applied.....	626	Wright v. Greenwood, 1 W.R. 393, applied.....	438
Whitworth's Case, 19 Ch.D. 118, 120, applied.....	175	Wyburd v. Stanton, 4 Esp. 179, followed.....	143
Whyte v. Ahrens, 26 Ch.D. 717, applied.....	549	Yarmouth v. France, 19 Q.B.D. 647, applied.....	458
Whyte v. National Paper Co., 17 D.L.R. 842, reversed.....	563	Yates v. Gardiner, 20 L.J.Ex. 327, applied.....	553
Widdop, R. v., L.R. 2 C.C.R. 3, applied.....	280	Yeates v. Caruth, [1895] 2 Ir. R. 146, followed.....	39
Wilcox v. Gotfrey, 26 L.T.N.S. 481, applied.....	733	Yorkshire v. Cooper, 10 B.C.R. 65, applied.....	294
Wilkes v. Williams, 2 J. & H. 125, followed.....	727	Young v. Brandon.....	255
Willett v. Rose, 31 W.L.R. 528, reversed.....	560	Young v. Leamington, 8 A.C. 517, distinguished.....	496
Williams v. Davies, 11 Q.B.D. 74, distinguished.....	389	Young v. Thomas, [1892] 2 Ch. 134, applied.....	36
Williams v. Hales, 8 N.Z.L.R. 100, applied.....	133	Young v. Thomas, [1892] 2 Ch. 134, followed.....	31
Williams v. Manchester, 13 Times L.R. 299, distinguished.....	506		

A DIGEST

—OF—

ALL REPORTED CASES DECIDED BY THE FEDERAL AND PROVINCIAL
COURTS IN THE DOMINION OF CANADA, AND BY THE PRIVY
COUNCIL ON APPEAL THEREFROM, DURING
THE YEAR 1915.

ABANDONMENT.

Of land held adversely, see Adverse Possession.

Of expropriation proceedings, see Eminent Domain; Damages.

Of action, see Dismissal.

Of appeal, see Appeal VI.

Of property in insolvency proceedings, see Bankruptcy; Insolvency; Assignment for Creditors.

Of contract, see Contracts.

Of wife, see Husband and Wife IV.

As ground for alimony, see Divorce and Separation.

Of homestead, see Homestead III.

Of highways, see Highways V.

ABATEMENT.

Plea in, see Pleading.

ABDUCTION.

(§ I—3)—ELOPEMENT WITH GIRL UNDER SIXTEEN AT GIRL'S SUGGESTION.

It is an offence under Cr. Code sec. 315 to take an unmarried girl under sixteen years of age out of the constructive possession of her father by meeting her by pre-arrangement and marrying her without the father's consent, and it is no defence that the girl was infatuated with him and asked him to marry her, nor that he might reasonably have thought her to be over sixteen; the effect of the clause declaring it to be immaterial whether the girl is taken "at her own suggestion" or not (sec. 315 (2)) is that a persuasive inducement from the accused is no longer a material ingredient of the offence. [R. v. Jarvis, 20 Cox C.C. 249, distinguished.]

Rex v. Meyers, 24 Can. Cr. Cas. 120.

ABORTION.

Sufficiency of indictment for procuring reviewed on appeal, see Appeal VII M.

ABSCONDING DEBTOR.

See Arrest; Attachment.

ABSTRACTS.

Of title, see Records and Registry Laws; Land Titles (Torrens system); Vendor and Purchaser.

ABUSE OF PROCESS.

See False Imprisonment; Malicious Prosecution.

DEMAND FOR JUDICIAL ABANDONMENT OF PROPERTY—INSOLVENCY—PRÉTENDU—GOOD FAITH.

When a debtor is notoriously insolvent, a demand for judicial abandonment of property made to him by a bookkeeper as pretension of a person who considers himself the real creditor but who is not, which demand is rejected by the Court, gives no right to an action for damages against them if they have acted in good faith, the demand for abandonment not affecting his credit nor causing him any damages.

Freidenberg v. Frisching, 47 Que. S.C. 389.

ABUTTING OWNER.

See Adjoining Owners; Lateral Support; Riparian Rights; Easements; Highways; Waters.

For compensation in expropriation proceedings, see Eminent Domain, III C; Damages, III L.

ACCELERATION.

Of time of payment, see Bills and Notes; Mortgages.

ACCEPTANCE.

Of bills of exchange, see Bills and Notes.
Of offer generally, see Contracts, I D.

ACCESSORY.

See Criminal Law.

Joint Tort Feasors, see Contribution; Negligence.

ACCIDENT.

Insurance against, see Insurance.

For railway accidents, see Railways; Street Railways; Carriers.

For accidents to employees, see Master and Servant.

For accidents to children, see Negligence, I C; Infants; Parent and Child.

For accidents on highways, see Highways; municipal liability for accidents, see Municipal Corporations.

ACCOMPLICE.

Accessory as, see Criminal Law.

Proof of acts or declarations of, see Evidence.

ACCORD AND SATISFACTION.

(§ I—3)—WHAT CONSTITUTES—TAKING NOTE OF THIRD PERSON.

A promissory note signed by a third party

Ber-Bri.]	COLUMN	Bro-Can.]	COLUMN
Beranek, Re, 24 Can. Cr. Cas. 252, followed.....	317	Bromfield v. Smith, Doe d., 2 T.R. 436, applied.....	347
Bernardin v. North Dufferin, 19 Can. S.C.R. 581, followed.....	496	Brooks-Sanford Co. v. Theodore, etc., Co., 22 O.L.R. 176, distinguished..	474
Berkeley Church v. Stevens, 37 U.C.Q.B. 9, applied.....	133	Brooks-Scanlon v. Fakkema, 44 Can. S.C.R. 412, applied.....	447
Bertrand v. Canadian Rubber Co., 12 Man. L.R. 27, followed.....	303	Brown v. Cambridge, 85 Mass. 476, applied.....	390
Bessemer Gas v. Mills, 8 O.L.R. 647, applied.....	180	Brown v. Coleman Development Co., 24 D.L.R. 869, reversed in 35 O.L.R. 219.....	134
Besterman v. British Motor Co., [1914] 3 K.B. 181, followed.....	185	Brown v. Coughlin, sub nom. Re Stratford Fuel Co., 13 D.L.R. 64, affirmed.....	177
Birdsall & Asphodel, Re, 45 U.C.R. 149, followed.....	328	Brown v. Moore, 32 Can. S.C.R. 93, followed.....	70
Birkett v. Bisonette, 15 O.L.R. 93, applied.....	430	Browning v. The Masson Co., 24 Que. K.B. 389, reversed in 52 Can. S.C.R. 137.....	209
Blackwoods & Manitoba Brewing & Malting Co. v. C.N.R. Co. & City of Winnipeg, 45 Can. S.C.R. 92, distinguished.....	579	Bryant, Re, 44 Ch.D. 218, applied.....	700
Blade v. Arundel, 1 M. & S. 711, followed.....	419	Bunting v. Bell, 23 Gr. 584, overruled..	474
Blank, R. v., 10 Can. Cr. Cas. 358, followed.....	650	Burchell v. Gowrie & Co., [1910] A.C. 614, followed.....	90
Blaugas Co. v. Can. Freight Ass'n, 13 Can. Ry. Cas. 176, 178, followed.....	104	Burford, Corp. of, v. Chambers, 24 O.R. 663, applied.....	39
Blomfield v. Rur. Mun. of Starland, 21 D.L.R. 859, affirmed.....	260	Burpee v. Carvill, 16 N.B.R. 141, followed.....	232
Blue v. Red Mountain R. Co., [1909] A.C. 362, followed.....	582	Burroughs v. Cottrell, 3 Sim. 375, followed.....	730
Board v. Board, L.R. 9 Q.B. 48, followed.....	11	Burt v. Dominion Steel & Iron Co., 25 D.L.R. 252, leave to appeal.....	262
Boissiere v. Brockner & Co., 6 T.L.R. 85, followed.....	390	Burt v. Sydney, 15 D.L.R. 429, applied.....	262
Boland v. G.T.R. Co., 18 Can. Ry. Cas. 60, followed.....	257	Bywater v. Brandling, 7 B. & C. 643, applied.....	314
Bolter v. Hamilton, 15 U.C.C.P. 125, followed.....	265	Cairney v. Back, [1906] 2 K.B. 746, applied.....	57
Bolton, R. v. (1841), 1 Q.B. 66, followed.....	112	Caisley v. Stewart, 21 Man. L.R. 341, followed.....	274
Bonanza Creek Gold Mining Co. v. The King, 21 D.L.R. 123, reversed in 26 D.L.R. 273.....	158	Cameron v. Bradbury, 9 Gr. 67, followed.....	286
Bond v. Conmee, 15 Ont. R. 716, 16 A.R. 398, approved.....	108	Cameron v. Carter, 9 O.R. 426, applied.....	691
Booth v. The King, 10 D.L.R. 371, affirmed.....	669	Cameron v. Cuddy, 13 D.L.R. 757, [1914] A.C. 651, followed.....	41
Booth v. McIntyre, 31 U.C.C.P. 183, distinguished.....	670	Campbell v. Irwin, 32 O.L.R. 48, reversed.....	407
Boulton v. Jeffrey, 1 Ont. E. & A. 111, distinguished.....	572	Campbell v. Roubert, 9 W.W.R. 175, affirmed.....	479
Bower v. Peate, 1 Q.B.D. 321, followed.....	511	Canada Foundry Co. v. Mitchell, 32 Can. S.C.R. 452, followed.....	679
Braun v. Hughes, 3 Man. L.R. 177, distinguished.....	704	Canada Steel & Wire Co. v. Ferguson, 19 D.L.R. 581, reversed.....	426
Breithaupt v. Marr, 20 A.R. 689, distinguished.....	288	Canadian Bank of Commerce v. Waite, 7 W.L.R. 255, distinguished.....	71
Breithaupt v. Marr, 20 A.R. 689, followed.....	306	Canadian Bank of Commerce v. Waldenar & Murphy, 30 W.L.R. 857, followed.....	71
Brennen & Sons v. Thompson, 22 D.L.R. 375, followed.....	21	Canadian China Clay Co. v. G.T., C.P. & C.N.R. Cos., 18 Can. Ry. Cas. 347, followed.....	104
Brenner v. Toronto R. Co., 13 O.L.R. 423, reversed.....	514	Canadian General Electric Co. v. Can. Rubber Co., 47 Que. S.C. 24, affirmed in 52 Can. S.C.R.....	214
Brewer v. Conger, 27 O.A.R. 10, followed.....	403	Canadian Northern R. Co., R. v., 18 Can. Cr. Cas. 170, followed.....	577
Brindamour, R. v., 11 Can. Cr. Cas. 315, followed.....	24	Canadian Pacific R. Co. v. Frechette, 23 Que. K.B. 203, reversed.....	447, 452, 453, 513
B.C. News Co. v. Express Traffic Ass'n, 13 Can. Ry. Cas. 176, 178, followed.....	104		
B.C. Portland Cement Co., Re, 22 D.L.R. 609, affirmed.....	82, 172		
Britton v. Foote, 2 Bro. C.C. 636, followed.....	403		

based upon an action which the plaintiff has withdrawn. The various incidents of a litigation should be susceptible of the same procedure.

Boutin v. Doyle, 48 Que. S.C. 432.

(§ I A—40)—WARRANTY—MATTERS OF OFFENCE AND CONVENTION.

There is an action in warranty in matters of offence or quasi-offence, as well as in matters of convention, but it is only on condition that the facts on which rests the demand in warranty, be the same as that on which the principal action is based.

Darrach v. Coté, 48 Que. S.C. 478.

ACT OF GOD.

See Accident; Negligence.

Defence for non-performance of contract, see Contract.

ADJOINING OWNERS.

See Abutting Owners.

Boundaries between, see Boundaries, II; Buildings.

Injury to lateral support, see Lateral Support.

Rights in party wall, see Party Wall.

(§ I—3)—RIGHTS TO LATERAL AND SUBJACENT SUPPORT—LIABILITY FOR REMOVING SAND FROM ADJOINING LOT.

The rights of adjoining landowners to the free use and enjoyment of the land in its natural condition, not only as regards lateral but also subjacent support, are rights incident to the land itself and not a mere easement; hence, the act of such owner in removing sand from a sandy beach of an adjoining lot, thereby facilitating the action of the wind and water in washing away a portion of the land, will render him liable for damages occasioned thereby. [*Dalton v. Angus*, 6 App. Cas. 740; *Jordeson v. Sutton, etc., Co.*, [1899] 2 Ch. 217; *Trinidad, etc., Co. v. Ambarid*, [1899] A.C. 594, applied.]

Cleland v. Berberick, 25 D.L.R. 583, 34 O.L.R. 636, 9 O.W.N. 198.

ADJOURNMENT.

In general, see Continuance and Adjournment.

ADMINISTRATION.

Of decedents' estates, see Executors and Administrators.

Of lunatics' estates, see Incompetent Persons.

Of infants' estates, see Infants.

ADMIRALTY.

I. JURISDICTION.

II. PRACTICE; PLEADING AND PROCEDURE.

As to liability of carriers generally, see Carriers.

As to matters peculiar to vessels, negligent navigation, see Shipping; Seamen; Salvage.

As to limitation of actions for negligence, see Limitation of Actions.

Annotation.

Liability of a ship or its owners for necessities supplied: 1 D.L.R. 450.

I. Jurisdiction.

(§ I—1)—PRACTICE.

It is no objection to the jurisdiction conferred by sec. 34 of the Admiralty Act, 1861, because that section relates to practice only, particularly where r. 228 provides the practice in respect of Admiralty proceedings, in cases not specially provided for by the rules, to be that of the High Court of Justice in England.

The King v. The "Despatch", 25 D.L.R. 221, 9 W.W.R. 738, reversing 23 D.L.R. 351, 8 W.W.R. 1253, 32 W.L.R. 13.

(§ I—2)—FOREIGN SHIPS—COLLISION IN FOREIGN WATERS.

A proceeding in an American Court, for the limitation of liability of ships of American registry for the consequences of a collision in American waters, does not oust the jurisdiction of the Canadian Courts to proceed in an action in rem upon a subsequent seizure of the ships in Canadian waters. [*Ont. Gravel Freighting Co. v. The "A. L. Smith"*, 22 D.L.R. 488, 15 Can. Ex. 111, affirmed.]

"A. L. Smith" and "Chinook" v. Ont. Gravel Freighting Co., 23 D.L.R. 491, 51 Can. S.C.R. 39.

(§ I—4b)—EXCHEQUER COURT—CONDEMNATION OF SHIP—INJURY TO BRIDGE.

A ship may be sued and condemned in damages in the Exchequer Court in favour of a municipality whose bridge over a river has been injured by the ship running into it through bad navigation amounting to negligence. [*Jones v. C.P.R. Co.*, 13 D.L.R. 900, 906, 83 L.J.P.C. 13, referred to.]

City of New Westminster v. The "Maa-gen", 21 D.L.R. 73, 21 B.C.R. 97.

(§ I—4b)—JURISDICTION OVER PERSON—APPEARANCE TO CONTEST LIABILITY.

Where owners appear and contest the liability of ships they become parties to the action and subject to have personal judgment pronounced against them for the amount of damages properly recoverable for the negligence of their servants. [*Ont. Gravel Freighting Co. v. The "A. L. Smith"*, 22 D.L.R. 488, 15 Can. Ex. 111, affirmed.]

"A. L. Smith" and "Chinook" v. Ontario Gravel Freighting Co., 23 D.L.R. 491, 51 Can. S.C.R. 39.

(§ I—4b)—SEAMEN'S WAGES—JURISDICTIONAL AMOUNT—RIGHT AGAINST SHIP.

Since under sec. 194 of the Canada Shipping Act, ch. 113, R.S.C., a master of a ship is put upon the same basis as a seaman in respect of recovery and remedy as well as of substantive rights, a claim of a master for wages less than the jurisdictional amount is within the restriction of sec. 191, which

the Admiralty Court has no jurisdiction to enforce against the ship of the defendant.

Beck v. The "Kobe," 24 D.L.R. 573, 9 W.W.R. 89, 32 W.L.R. 351.

II. Practice; pleading and procedure.

(§ II—5)—COLLISION ACTION—FOREIGN PROCEEDINGS—RULE AS TO.

The rule as to restraining a collision action in the domestic forum because of an action relating to the same matter in a foreign Court is one of convenience and fair dealing, but can only be invoked by the defendant where the plaintiff is in some way responsible for or a party to the foreign proceedings; so, if the defendant has given a bond to pay the damages awarded, if any, and has thereupon obtained the release of the ship arrested in Canada, it is not open to the defendant to object to the jurisdiction on the ground of a pending action taken by one of the defendant ships in a United States Court to limit her liability, although the collision occurred in American waters and the defendant ships are both of American register. [*St. Clair v. Whitney*, 38 Can. S.C.R. 303, distinguished.]

Ontario Gravel Freighting Co. v. "A. L. Smith" and "Chinook," 22 D.L.R. 488, 15 Can. Ex. 111.

[Affirmed in *"A. L. Smith" and "Chinook" v. Ont. Gravel Freighting Co.*, 23 D.L.R. 491, 51 Can. S.C.R. 39.]

(§ II—5)—SALVAGE—LIABILITY OF SHIP AND CARGO.

The rule upon a claim in admiralty proceedings for salvage is, that unless there is a specific agreement for a sum certain, the interests in the ship and cargo are only severally liable each for its proportionate share of the salvage remuneration. [*The "Mary Pleasants,"* Swab. 224; *The "Pyrennee,"* Br. & L. 189; *The "Raisby,"* 10 P.D. 114, referred to.]

Peninsular Tug & Towing Co. v. The "Stephie," 22 D.L.R. 600, 15 Can. Ex. 124.

(§ II—5)—ACTION BY CROWN—SECURITY—STAY—CONSOLIDATION OF ACTIONS.

In an action by the Crown against a ship for damages for a collision and a cross-action in personam by the owner of the ship against the master of a government tug for damages resulting from the same collision, the Admiralty Court will entertain a motion for a stay of proceedings until security for judgment is given by the Crown, or for a consolidation of the actions.

The King v. The "Despatch," 23 D.L.R. 351, 8 W.W.R. 1253, 32 W.L.R. 13.

[Reversed in 25 D.L.R. 221, 9 W.W.R. 738.]

(§ II—6)—INJURIES TO SHIP—PARTIES—ASSIGNEE—MORTGAGEE—TRUE OWNER.

The assignee of a ship, to whom a ship is assigned for the purpose of enabling him to execute a valid mortgage thereon on behalf of a foreign subject, cannot maintain an action for injuries to the ship, where his certificate of British registry, to establish

his ownership, had not been obtained until after the occurrence of the accident; and such mortgagee cannot, by virtue of sec. 45 of the Canada Shipping Act, be deemed the owner, nor may the foreign assignor be added as a party to such action without his written consent.

Strong v. Can. Pac. R. Co., 25 D.L.R. 51, 9 W.W.R. 451, 32 W.L.R. 849.

(§ II—7)—COLLISION WITH CROWN SHIP—CROSS-CAUSE—SECURITY BY CROWN.

An action in personam against the master of a government tug, for his negligence in a collision with the plaintiff's ship, is neither an action in rem or in personam against the Crown; nor can it be considered a cross-cause to a proceedings in rem by the Crown against the plaintiff's ship, so as to permit a stay of the Crown's proceedings, under sec. 34 of the Admiralty Act, 1861, until it furnishes security to answer the judgment which may be obtained in the cross-cause. [*The King v. The "Despatch,"* 23 D.L.R. 351, 8 W.W.R. 1253, 32 W.L.R. 13, reversed.]

The King v. The "Despatch," 25 D.L.R. 221, 9 W.W.R. 738.

(§ II—9)—SALVAGE—RELEASE ON BAIL—COMPETENCY OF SURETY.

Held, that in a salvage case arising in the Quebec Admiralty District, an incorporated company duly authorized by law to carry on the business of suretyship may be accepted as bail for the purpose of releasing the property salvaged.

Re 251 Bars of Silver and Canadian Salvage Assn. (No. 2), 15 Can. Ex. 370.

(§ II—12)—LIMITATION OF LIABILITY—NECESSITY OF PLEADING.

There is no right to a limitation of liability under American or Canadian statutes, if not pleaded nor any evidence of it produced. [*Ont. Gravel Freighting Co. v. The "A. L. Smith,"* 22 D.L.R. 488, 15 Can. Ex. 111, affirmed.]

"A. L. Smith" and "Chinook" v. Ontario Gravel Freighting Co., 23 D.L.R. 491, 51 Can. S.C.R. 39.

ADMISSIONS.

By pleading or failure to plead, see Pleading.

In evidence, see Evidence, IX.

ADULTERY.

(§ I—5)—AS INDICTABLE OFFENCE.

Adultery is an indictable offence in the province of New Brunswick under the pre-confederation statute of that province, R.S. N.B. 1854, ch. 145, sec. 3, which has not yet been repealed by the Dominion Parliament.

Rex v. Strong, 24 Can. Cr. Cas. 430.

(§ I—5)—PROCEDURE APPLICABLE.

The repeal in 1886 by the Dominion Parliament of parts of certain pre-confederation statutes of New Brunswick, which regulated procedure in prosecutions for adultery under R.S.N.B., 1854, ch. 145, leaves that offence

punishable in New Brunswick under the procedure applicable to indictable offences generally under the Criminal Code of Canada. [R. v. Buchanan, 8 Q.B. 883, referred to.]
Rex v. Strong, 24 Can. Cr. Cas. 430.

ADVERSE POSSESSION.

I. WHAT CONSTITUTES.

- A. In general.
- B. On boundary.
- C. Vendor and purchaser.
- D. Landlord and tenant.
- E. As to dower; mortgage or trust.
- F. As to tenants in common and by entirety.
- G. As to remaindermen or reversioners.
- H. As to public; highway, canal, or tide land.
- I. Colour of title.
- J. Claim; hostility.
- K. Extent and kind of possession.

II. EFFECT; TIME REQUIRED.

III. WHO MAY HOLD ADVERSELY.

Easement by prescription, see Easements.
As to limitation of action, see Limitation of Actions.

Annotation.

Tacking; successive trespassers: 8 D.L.R. 1021.

I. What constitutes.

A. IN GENERAL.

(§ I A—1) — PRESCRIPTION — DISTINCTION BETWEEN.

The distinction in English law between prescription and adverse possession is that prescription relates to an incorporeal hereditament, while adverse possession is in respect of a thing corporeal.

The King v. Tweedie, 22 D.L.R. 498, 15 Can. Ex. 177.

[Case reversed in 52 Can. S.C.R. 197.]

D. LANDLORD AND TENANT.

(§ I D—15)—ADVERSE HOLDING BY TENANT—PAYMENT OF TAXES AS RENT.

The continued and uninterrupted possession of land for the statutory period, but entered on under an agreement to pay the taxes thereon as rent, and no other rent having been stipulated for, the payments of such taxes operate as an acknowledgment of title which will prevent the Limitation Act, R.S.O. 1914, ch. 75, sec. 6 (7), from accruing. [Finch v. Gilray, [1889] 16 A.R. (Ont.) 484, distinguished.]

East v. Clarke, 23 D.L.R. 74, 33 O.L.R. 624, 8 O.W.N. 342.

E. AS TO DOWER; MORTGAGE OR TRUST.

(§ I E—22) — LIMITATIONS AGAINST MORTGAGEE—EFFECT OF PAYMENTS.

The Limitation Act, R.S.O. 1914, ch. 75, sec. 23, is inoperative against a mortgagee or any person claiming under him, to whom the land was conveyed by a deed absolute in form but intended only as security for a loan and on which payments were being made.

East v. Clarke, 23 D.L.R. 74, 33 O.L.R. 624, 8 O.W.N. 342.

(§ I E—22) — HYPOTHEC BY PRESCRIPTION.

One who acquires in good faith, and by title transferring the ownership, an immovable burdened with hypothec, and who has the useful possession of it under this title for ten years, is discharged of liability for these hypothecs by prescription.

Samson v. Laroche, 48 Que. S.C. 261.

F. AS TO TENANTS IN COMMON AND BY ENTIRETY.

(§ I F—25)—POSSESSION AGAINST—RIGHTS OF PURCHASER.

No title as against the co-tenants is acquired by a purchase of lands from a tenant in common who has not the possession of the lands against the co-tenants as required by sec. 14 of the Statute of Limitations (N.S.).

Miller v. Halifax Power Co. Ltd., 24 D.L.R. 29, 48 N.S.R. 370.

(§ I F—25)—PRESCRIPTION—HUSBAND AND WIFE.

Art. 2233 C.C.Q., which provides that husband and wife cannot prescribe against each other, cannot be invoked for the benefit of third parties.

Boivin v. Chicoutimi Water & Electric Co., 25 D.L.R. 361, 24 Que. K.B. 394.

(§ I F—25)—CO-TENANCY BETWEEN PARENT AND CHILD—POSSESSION BY STEPMOTHER.

There is no irrebuttable presumption, in the case of parent and infant child entitled to undivided shares in land as tenants in common, that the parent in possession holds as "bailiff" in respect of the share of the child out of possession; the question for whom the possession was taken and held is always a question of fact, though ordinarily the finding should be that the possession of the parent is that of the child. It was held, in this case, upon the evidence, in an issue tried between the parties, that the plaintiff therein, the stepmother of the defendants, had acquired, under the provisions of the Limitations Act, title to the rights and interests of the defendants, by length of possession—her possession being for herself, and not as their bailiff. A motion for partition, made by the stepchildren, out of which the issue arose, was dismissed with costs. No costs of the trial of the issue were allowed, because the trial was unnecessary, there being no material question of fact really in dispute.

Fry and Moore v. Speare, 34 O.L.R. 632, 9 O.W.N. 196.

(§ I F—25)—POSSESSION OF LAND—CONVEYANCE TO PARTNERS—DEATH OF PARTNER—ACTS OF OWNERSHIP BY SURVIVOR—PAYMENT OF TAXES—LEASE OF LAND—STATUTE RUNNING AGAINST HEIRS OF DECEASED PARTNER—LIMITATIONS ACT, R.S.O. 1914, CH. 75, SEC. 12—DECLARATION OF TITLE—COSTS.

Réaume v. Coté, 9 O.W.N. 17.

G. AS TO REMAINDERMEN OR REVERSIONERS.

(§ I G—31)—LIFE TENANTS—HEIRS OF REVERSIONER.

The continued occupation of land by the successors in title, in which their predecessors had a life estate as tenants in common, for a period more than 35 years between the death of the life tenant and the commencement of action for its recovery by the heirs of the reversioner, is within the purview of sec. 7 (3) of the Limitation Act, R.S.O. 1914, ch. 75, barring recovery where lands are held adversely for a period of 10 years.

Stuart v. Taylor, 22 D.L.R. 282, 33 O.L.R. 20, 7 O.W.N. 551.

(§ I G—31)—LIFE TENANT AGAINST REMAINDERMAN.

Where a devise of land may be rendered inoperative by the subsequent execution of a deed to the same property, still, where the grantee elects to take under the will instead of making entry under the deed, a person holding a life estate to the land cannot set up the Statute of Limitations as against the remainderman for his failure to make entry under the deed within the statutory period. [Board v. Board, L.R. 9 Q.B. 48, followed.]

Connors v. Myatt, 24 D.L.R. 537, 49 N.S.R. 139.

H. AS TO PUBLIC; HIGHWAY, CANAL OR TIDE LAND.

(§ I H—35)—AGAINST CROWN'S GRANTEE.

The period that one adversely holds Crown lands will not enure against the grantee of the Crown; and the possessory claim of one seeking to establish title by adverse possession will not begin to run until the date of the grant to the Crown's grantee. Semble: That the Act of Assembly, 4 Geo. V. ch. 36, coupled with the provisions of the Act, 3 Edw. VII. ch. 19, notwithstanding any previous claims that might have existed on the part of any person or persons to the land designated in such Act, 4 Geo. V., and to issue to the purchaser thereof a Crown grant, which would be perfectly good and conclusive against all the world, and the prescriptive title would not avail against such grant from the Crown under these special Acts.

Ouellet v. Jalbert, 43 N.B.R. 599.

J. CLAIM; HOSTILITY.

(§ I J—50)—POSSESSORY TITLE TO LAND—EVIDENCE — BUILDING — ENCROACHMENT—RETENTION OF LAND ENCROACHED UPON—IMPROVEMENT UNDER MISTAKE OF TITLE—CONVEYANCING AND LAW OF PROPERTY ACT, R.S.O. 1914, CH. 109, SEC. 37—COMPENSATION—DAMAGES FOR TRESPASS—COSTS.

Harrison v. Schultz, 7 O.W.N. 758.

K. EXTENT AND KIND OF POSSESSION.

(§ I K—58)—ADVERSE OCCUPANCY.

Possession follows the title unless there be an actual adverse occupancy. [Pride v.

Rodger, 27 O.R. 320; Doe d. Cuthbertson v. McGillis, 2 U.C.C.P. 124, referred to.]

Berard v. Bruneau, 22 D.L.R. 83, 25 Man. L.R. 400, 8 W.W.R. 635.

II. Effect; time required.

(§ II—64)—AGAINST CROWN—BED OF NAVIGABLE RIVER.

No title by adverse possession against the Crown accrues to the solum or bed of a navigable river by stretching a boom and booming logs in the waters of the river; the right to use a navigable river in that way is distinct from a right to the bed of the river, and is subject to the public right of navigation. [Atty.-Gen. of B.C. v. Atty.-Gen. of Canada, [1914] A.C. 153, 168, 15 D.L.R. 306, referred to.]

The King v. Tweedie, 22 D.L.R. 498, 15 Can. Ex. 177.

[Reversed in 52 Can. S.C.R. 197.]

III. Who may hold adversely.

(See previous Annual Digests.)

AFFIDAVITS.

On motion, see Motions and Orders.

On application for commission to take testimony, see Depositions.

For summary judgment, see Judgment.

(§ I—1)—WHAT CONSTITUTES—DECLARATION WITH JURAT ADDED.

A document in the form of a statutory declaration under the Canada Evidence Act except that the justice had certified that it was "sworn" before him, is not a valid affidavit; the word "oath" or some equivalent in the body of the document is essential to make it an affidavit. [Phillips v. Prentice, 2 Hare 542; Re Newton, 2 DeG. F. & J. 3; Allen v. Taylor, L.R. 10 Eq. 52, 39 L.J. Ch. 627, referred to.]

Rex v. Marshall, 24 Can. Cr. Cas. 180, 31 W.L.R. 702.

AGENCY.

See Principal and Agent.

AGGRAVATION.

Of damages, see Damages.

AGREEMENTS.

Contracts generally, see Contracts.

Agreements for farm crossings, see Railways; Highways.

Sale of land, see Vendor and Purchaser.

ALIENS.

I. IN GENERAL; IMMIGRATION; DEPORTATION.

II. NATURALIZATION.

III. DISABILITIES AND CAPACITIES; PROPERTY RIGHTS.

Foreign corporations, see Corporations and Companies.

Foreign executors, see Executors and Administrators.

Annotations.

Deportation; exclusion from Canada of British subjects of Oriental origin: 15 D.L.R. 191.

Their status during war: 23 D.L.R. 375; 22 D.L.R. 865.

I. In general; immigration; deportation.

(See previous Annual Digests.)

II. Naturalization.

(§ II—7)—ALIEN ENEMIES.

An alien enemy is not within the provisions of the Naturalization Act, R.S.C. 1906, ch. 77; and an application for naturalization under that Act, if it appears that the applicants are alien enemies, may be refused upon the Judge's own initiative, though no opposition has been filed and no objection offered. [The King v. Lynch, [1903] 1 K.B. 444, and Porter v. Freudenberg, [1915] 1 K.B. 857, followed; in re Hersfeld, 46 Que. S.C. 281, disapproved.]

Re Cimonian, 23 D.L.R. 363, 34 O.L.R. 129, 8 O.W.N. 448.

III. Disabilities and capacities; property rights.

(§ III—15)—ALIEN ENEMY—WHEN NOT.

An alien, resident of Quebec, although born in a country at war with the British Empire, is not necessarily an enemy. [See Annotation on Aliens, 23 D.L.R. 375.]

Viola v. Mackenzie, Mann & Co., 24 D.L.R. 208, 24 Que. K.B. 31.

(§ III—15)—ALIEN ENEMY RESIDENTS—RIGHTS AND PRIVILEGES.

Aliens residing in Canada, but who are subjects of countries at war with the British Empire, are granted, by the Royal Proclamations (September 12 and 29, 1914) the protection of our laws, and, unless they are guilty of hostile acts, are to be left in the enjoyment of their rights and privileges, and the person alleging an act of hostility must prove it.

Viola v. Mackenzie, Mann & Co., 24 D.L.R. 208, 24 Que. K.B. 31.

(§ III—15)—ALIEN ENEMY—RIGHT TO MONEY IN HANDS OF TRUSTEE—PROPOSED WITHDRAWAL FROM PROVINCE—NATURALIZATION IN UNITED STATES SINCE ACTION BEGUN—REVIEW OF FORMER ORDER—RULE 523.

Myers v. Teller, 8 O.W.N. 414.

(§ III—19)—ALIEN ENEMY—SUITS BY OR AGAINST.

An alien enemy may be sued although under a disability to sue during a state of war, and if the action against him is dismissed as unfounded, the Court may award him costs.

Rydstrom v. Krom, 21 D.L.R. 118, 7 W.W.R. 1290, 31 W.L.R. 7, 21 B.C.R. 254.

(§ III—19)—ACTION BY ADMINISTRATOR—BENEFIT OF ALIEN ENEMIES.

An action under the Fatal Accidents Act, R.S.O. 1914, ch. 151, brought by the administrator of the estate of a deceased person, cannot be maintained if brought for the benefit of alien enemies of the King. [Continental Tyre and Rubber Co. v. Daimler Co., [1915] 1 K.B. 893, distinguished; Dumenko v. Swift Canadian Co., 32 O.L.R. 87, followed.]

Dangler v. Hollinger Gold Mines, 23 D.L.R. 384, 34 O.L.R. 78, 8 O.W.N. 398.

(§ III—19)—ACTIONS BY—STAY OR DISMISSAL.

An action commenced under the Fatal Accidents Act by an alien enemy, who pays money into Court as security for costs, will not be dismissed but merely stayed until after the restoration of peace. [Dumenko v. Swift, 32 O.L.R. 87, distinguished; Porter v. Freudenberg, [1915] 1 K.B. 857, followed. See Annotation in 23 D.L.R. 375.]

Luczycki v. Spanish River Pulp & Paper Mills Co., 25 D.L.R. 198, 34 O.L.R. 549, 9 O.W.N. 136, reversing 8 O.W.N. 616.

(§ III—19)—ACTIONS UNDER WORKMEN'S COMPENSATION ACT—STATUTORY PERIOD.

A mother residing in a foreign country and depending partly upon the earnings of her son for her living, can sue before the Courts of the province of Quebec, under the Alberta Workmen's Compensation Act, where her son has been killed in the service of a railway company having its principal place of business in the city of Montreal. Under this latter Act, the employer becomes liable to pay an indemnity to his employee by the sole fact of his being killed during his services, and the claim dates from the date of the accident. Under the same Act, the absence in a foreign country far away is a justification for not filing a claim within the delay fixed by law.

Johansdotter v. Can. Pac. R. Co., 47 Que. S.C. 76.

(§ III—24)—ASSISTING ALIEN ENEMY TO LEAVE CANADA.

A jury trying a charge under Cr. Code, sec. 75A, for assisting an enemy alien to leave Canada may properly infer that the person assisted is an alien enemy on his testimony that his earliest recollections are of residence in the enemy country and proof that he had registered in Canada as an alien enemy. [Guerin v. Bank of France, 5 Times L.R. 160, referred to.]

Rex v. Oma, 25 D.L.R. 670, 25 Can. Cr. Cas. 73, 8 S.L.R. 395, 9 W.W.R. 584, 32 W.L.R. 958.

(§ III—24)—"ASSISTING"—KNOWLEDGE OF INTENTION TO LEAVE.

Where an alien enemy starts for the boundary line with the intention of leaving Canada he is to be considered as in the act of leaving Canada on every part of the journey, and any person knowing such intention on his part and doing any act in furtherance of that intention thereby assists

such alien enemy within the meaning of Cr. Code, sec. 75A, whether the latter got across the boundary line or not. [Compare *R. v. Nerlich*, 25 D.L.R. 138, 24 Can. Cr. Cas. 256.]

Rex v. Oma, 25 D.L.R. 670, 25 Can. Cr. Cas. 73, 8 S.L.R. 395, 9 W.W.R. 584, 32 W.L.R. 958.

ALIMONY.

See Divorce and Separation.

ALLEYS.

Public, see Highways.

Private, see Easements.

ALTERATION OF INSTRUMENTS.

I. IN GENERAL.

II. BILLS AND NOTES.

A. In general.

B. What alterations are material.

I. In general.

(See previous Annual Digests.)

II. Bills and notes.

B. WHAT ALTERATIONS ARE MATERIAL.

(§ II B—10)—VOIDING NOTE BY MATERIAL ALTERATION—RIGHT TO SUE ON ORIGINAL CONSIDERATION.

A material alteration in a note renders the same void, and a holder, who has fraudulently altered the note, cannot succeed in an action based on the consideration for the note.

O'Brien v. Brennan, 9 W.W.R. 277.

(§ II B—12)—CHANGING RATE OF INTEREST—RIGHT TO SUE UPON ORIGINAL CONSIDERATION.

Where a promissory note is taken in satisfaction of payment of a car, the amount of the purchase price represented by it cannot be sued upon after an avoidance of the note by a fraudulent alteration by the holder of the rate of interest therein.

Wyton v. Hille, 25 D.L.R. 89, 9 W.W.R. 591, 32 W.L.R. 925.

AMENDMENT.

On appeal, see Appeal, IV.

Of judgment, see Judgment, I.

Of pleading, see Pleading, I.

Of records, see Records and Registry Laws; Land Titles.

Of statute, see Statutes.

Of information in summary proceedings, see Summary Conviction.

Amendment of writ and declaration, see Writ and Process.

AMUSEMENTS.

(§ I—1)—RIGHTS OF SPECTATORS—SCOPE OF LICENSE—EJECTMENT.

One entering upon amusement premises under a paid license enjoys a contractual privilege to remain there undisturbed during the performance, and if forcibly ejected, he

is entitled to recover against the owners for breach of contract and for the assault committed upon him. [*Wood v. Ledbitter*, 13 M. & W. 838, distinguished; *Hurst v. Picture Theatre Ltd.*, [1915] 1 K.B. 1, followed.] *Barnswell v. National Amusement Co.*, 23 D.L.R. 615, 31 W.L.R. 542.

ANIMALS.

I. RIGHTS AND LIABILITIES CONCERNING.

A. Rights of owners generally.

B. Liability for killing or injuring dogs.

C. Liability for injuries by.

D. Running at large.

E. Animals with infectious diseases.

F. Tax on dogs.

II. CRUELTY TO.

Negligence in fast driving of horse on highway, see Highways.

Injury to, by railway train, see Railways II; Carriers.

Liability of bailee of, for injury to, see Bailment.

I. Rights and liabilities concerning.

(§ I C 1—20)—VICIOUS ANIMAL—LIABILITY OF OWNER—PRESUMPTION AS TO.

The owner of an animal is liable for injury caused by it, just as every person is responsible for things in his care, only when he cannot prove that he was unable to prevent the act which caused the injury; in other terms, he is allowed to rebut the presumption of fault established against him by art. 1055 C.C.

Du Tremble v. Poulin, 48 Que. S.C. 121.

II. Cruelty to.

(See previous Annual Digests.)

ANNUITIES.

Trust to pay annuities, see Trusts; Wills.

ANNULMENT.

Of marriage, see Marriage, IV; Divorce and Separation.

Of Crown grant, see Public Lands.

Of convictions, see Summary Convictions; Certiorari.

ANTE-NUPTIAL CONTRACT.

See Husband and Wife; Marriage.

APPEAL.

I. RIGHT OF APPEAL; WHAT CASES REVIEWABLE.

A. In general.

B. Finality of decision.

C. Criminal cases.

D. Modes of review.

II. JURISDICTION OF PARTICULAR COURTS.

A. Of Supreme Court of Canada.

B. Of Exchequer Court of Canada.

C. Of Provincial Courts.

III. TRANSFER OF CAUSE; PARTIES; TIME LIMITATIONS.

- A. Right to transfer.
- B. Effect; subsequent proceedings in Court below.
- C. Parties.
- D. Mode; conditions; regulations.
- E. Citation; notice; appearance.
- F. Time; extension.
- G. Security.

IV. RECORD AND CASE IN APPELLATE COURT.

- A. In general.
- B. What should be shewn by.
- C. Contradictions in.
- D. Amending; perfecting.
- E. Affidavits.
- F. Evidence; adding fresh evidence.
- G. Stenographer's notes.
- H. Instructions.
- I. Findings.
- J. Opinions.
- K. Motions and orders.
- L. Certificates.
- M. Abstracts.
- N. Case made; statements.
- O. Bill of exceptions.
- P. Assignments of error.
- Q. Waiver of assignments of error.
- R. Briefs.

V. OBJECTIONS AND EXCEPTIONS; RAISING QUESTION IN LOWER COURT.

- A. Definiteness; sufficiency.
- B. Necessity for exceptions.
- C. Time for exceptions.
- D. Raising questions by motion or other mode.

VI. PRELIMINARY MOTIONS; DISMISSAL; ABATEMENT; ABANDONMENT.

- A. In general.
- B. Grounds for dismissal.
- C. Preferences of causes.
- D. Continuance and submission.

VII. HEARING AND DETERMINATION.

- A. In general; rules of decision.
- B. Who may complain.
- C. Evidence; amendments; trial de novo.
- D. Presumptions.
- E. What reviewable, generally.
- F. Decisions in favour of party, or not affecting him.
- G. Objections as to which party is estopped.
- H. Interlocutory matters; orders, etc., not appealed from.
- I. Discretionary matters.
- J. Questions not raised below.
- K. Errors waived or cured below.
- L. Review of facts.
- M. What errors warrant reversal.
- N. Effect of matters occurring after decision below.

VIII. JUDGMENT.

- A. In general.
- B. Rendering modified judgment.
- C. Remanding; granting new trial.
- D. Costs; interest; damages for delay.
- E. Effect of decision; subsequent proceedings.
- F. Correction.

IX. REHEARING (ON APPEAL).

X. LIABILITY ON APPEAL BOND.

XI. GRANTING LEAVE TO APPEAL.

Annotations.

Appellate jurisdiction to reduce excessive verdict: 1 D.L.R. 386.

Effect of war on appeals in actions by alien enemies: 23 D.L.R. 375, 382.

Judicial discretion; appeals from discretionary orders: 3 D.L.R. 778.

Service of notice of; recognizance: 19 D.L.R. 323.

I. Right of appeal; what cases reviewable.

A. IN GENERAL.

(§ I A—1)—INTERPLEADER ISSUE.

An appeal lies without leave from a County Court judgment in an interpleader issue where the value of the property involved is over \$100, under O. 13, r. 7, of the B.C. County Court Rules, 1912. [Re Tarn, [1893] 2 Ch. 280, applied.]

Ritchie Contracting Co. v. Brown, 21 D.L.R. 86, 21 B.C.R. 89, 8 W.W.R. 84, 30 W.L.R. 723.

(§ I A—1)—INTERPLEADER BEFORE LOCAL MASTER.

The decision of a Master in an interpleader proceeding is subject to an appeal to a Judge in Chambers.

Douglas v. Vivian, 7 S.L.R. 80.

(§ I A—1) — SUBSTANTIVE RIGHTS — JUDGMENT FOR REFERENCE, BUT NOT VARYING DAMAGES.

The judgment of a Provincial Supreme Court which does not determine adversely the quantum of damages, but merely orders the case back for a further reference, constitutes no deprivation of a "substantive right in controversy in the action" within the meaning of secs. 2 (e) and 36 of the Supreme Court Act, R.S.C. 1906, ch. 139, as amended by Act, 1913, from which an appeal will lie. [16 D.L.R. 361, 30 O.L.R. 44, affirmed.]

Wood v. Grand Valley R. Co., 22 D.L.R. 614, 51 Can. S.C.R. 283.

(§ I A—1)—RAILWAY ORDERS—ADDING SPECIFIC DIRECTIONS.

An order of the Superior Court directing the construction of drainage to prevent the overflowing of lands by railway ditches, which is rendered more specific by a judgment of the Superior Court in adding thereto recourse for future damages in case of default, is in effect a confirmation of the judgment of the Court of first instance, and therefore appealable to the Supreme Court of Canada by virtue of sec. 40 of the Supreme Court Act, R.S.C. 1906, ch. 139. [Hull Electric Co. v. Clement, 41 Can. S.C.R. 419, followed.]

Canadian North. Que. R. Co. v. Gilbert Gignac, 22 D.L.R. 626, 51 Can. S.C.R. 136.

(§ I A—1)—EXPROPRIATION AWARD.

No appeal lies from an award made under the expropriation clauses of the City Act,

Sask., nor does the "Act respecting Judges' Orders in matters not in Court," R.S.S. ch. 55, apply to an award made by a district Judge acting as arbitrator under the City Act.

Yager & Western Trust Co. v. Corp. of Swift Current, 22 D.L.R. 801, 7 W.W.R. 978.

(§ I A—1)—EXPROPRIATION AWARD.

There is no appeal to the Court of Review from an award made by a Judge of the Superior Court under the provisions of the Act for expropriation of the lands required for operation of hydraulic power. This appeal should be taken by action in the Superior Court under the provisions of art. 7294 of the Revised Statutes notwithstanding the amendment by 4 Geo. V. ch. 55.

Quebec Development Co. v. Rousseau, 48 Que. S.C. 522.

(§ I A—1)—QUESTIONS OF VALUATION.

Unfavourable criticism of the existence of a right of appeal to the Supreme Court of Canada, where the sole question is one of valuation, and the provincial Legislature has withheld a right of appeal to the Appellate Court of the province.

Pearce v. City of Calgary, 9 W.W.R. 668.

(§ I A—1) — MUNICIPAL ELECTIONS — FIATS — ORDERS OF COUNTY COURT.

There is no right of appeal, with or without leave, from an order of the County Court Judge dismissing a motion to set aside fiats granted by him under sec. 162 of the Municipal Act, R.S.O. 1914, ch. 192, respecting the determination of the validity of an election to municipal offices.

Rex ex rel. Boyce v. Ellis, 24 D.L.R. 118, 33 O.L.R. 575, 8 O.W.N. 307.

(§ I A—1)—MUNICIPAL BUSINESS.

When the Code of Procedure, by arts. 43 and 1006, declares that there will be no right of appeal in municipal matters that should be understood to apply to cases instituted pursuant to the provisions of the Code. This does not mean that there can be no appeal when a municipal question is in litigation and raised in an action brought under the common law.

Desjardins v. Village de Ste. Rose, 48 Que. S.C. 414.

(§ I A—1)—TO PRIVY COUNCIL—ORDERS OF RAILWAY BOARD—REVIEW BY COURTS.

Re Toronto R. Co. and City of Toronto, 25 D.L.R. 841, 34 O.L.R. 465, 9 O.W.N. 86.

(§ I A—1)—TO COURT OF REVIEW—LIQUOR LICENSE CASES.

There is no right of appeal to the Court of Review from the judgment of the Superior Court granting a motion for a declaration that the evocation to the Superior Court in a case in which the petitioner demands the annulment of a resolution granting a license for sale of intoxicating beverages is illegal and void. The inscription in such case should be dismissed on motion.

Desjardins v. Village de Ste. Rose, 48 Que. S.C. 414.

(§ I A—1) — CONFIRMATION OF LICENSE BY MUNICIPAL COUNCIL.

There is no appeal either to the Court of Review or the Court of King's Bench from a judgment dismissing a petition to quash a resolution of a municipal council confirming a certificate for a license presented according to the provisions of arts. 100 and 698 to 708 of the Municipal Code.

Pilon v. City of Lachine, 47 Que. S.C. 200.

(§ I A—1)—FROM JUDGMENT OF SURROGATE COURT.

Under the terms of sec. 37 (d) of the Supreme Court Act an appeal lies to the Supreme Court of Canada from the judgment of the Appellate Division of the Supreme Court of Ontario in a case originating in a Surrogate Court of that province. *Idington, J., dubitante*. On the merits the judgment of the Appellate Division, 32 O.L.R. 312, was affirmed.

Re Rundle, 52 Can. S.C.R. 114, 26 D.L.R.

(§ I A—1)—FROM REFUSAL TO REMOVE CAUSE.

An appeal lies to the Court of Appeal from the refusal of a Judge of the Court of King's Bench to remove a cause to that Court.

Jones v. Momberg, 21 D.L.R. 863, 8 W.W.R. 1059.

(§ I A—2)—HABEAS CORPUS—DISCHARGE OF PRISONER—REVIEW.

When a Judge hears an application for habeas corpus he does so as representing the Court, and his decisions are always subject to review by the Court of which he is deputy. The Appellate Division has jurisdiction to hear an application to reverse an order of discharge of a prisoner made by a single Judge upon habeas corpus, both because of its inherent jurisdiction to review the decision of one of its Judges, r. 20 of the Crown Practice Rules providing that the form shall be by way of appeal, and because, being a matter entirely within the Court, that rule is valid as being a rule of procedure in the Court and nothing more. [*Re Sproule*, 12 Can. S.C.R. 140, applied.] The Crown in such a case ought to request the single Judge, if there is any serious ground for maintaining the validity of the imprisonment, and unless he is prepared to dismiss the application entirely to adjourn the matter to be heard by the Appellate Division and to take the prisoner's recognizance to appear before the Appellate Division and release him in the meantime. (*Per Stuart, J.*)

Rex v. Thornton, 9 W.W.R. 825, 968, 25 Can. Cr. Cas.

B. FINALITY OF DECISION.

(§ I B—5)—REMITTING CASE FOR WANT OF AUTHORITY TO SUE.

A judgment which without deciding the merits remits the case to the Court of first instance for the production of authority to the wife by the husband for the purpose of prosecuting the action is final in its nature

from which an appeal will lie. [*Chiniquy v. Begin*, 20 D.L.R. 347, reversed; 7 D.L.R. 65, varied.]

Chiniquy v. Begin, 24 D.L.R. 687, 24 Que. K.B. 294.

(§ I B-6)—ORDERS OF COUNTY COURT—STRIKING OUT PLEADINGS.

An order of a senior Judge of the County Court setting aside an order of the junior Judge which granted leave to file a statement of defence under r. 56 (5) (Ont.), and striking out a counterclaim filed thereunder, is final in its nature from which an appeal will lie. [County Court Act, R.S.O. 1914, ch. 59, sec. 40 (2); *Smith v. Traders Bank*, 11 O.L.R. 24; *Brennen & Sons v. Thompson*, 22 D.L.R. 375, followed.]

Davis Acetylene Gas Co. v. Morrison, 23 D.L.R. 871, 34 O.L.R. 155, 8 O.W.N. 474.

(§ I B-11)—ACTION FOR NEWSPAPER LIBEL—ORDERS FOR SECURITY FOR COSTS.

By virtue of sub-sec. 4 of sec. 12 of the Libel and Slander Act, R.S.O. 1914, ch. 71, no appeal lies from a substantive order for security for costs against a plaintiff in an action for newspaper libel made by a Judge in Chambers in review of the Master's Order in reference thereto.

Augustine Automatic Rotary Engine Co. v. "Saturday Night," Ltd., 24 D.L.R. 767, 34 O.L.R. 167, 8 O.W.N. 503.

(§ I B-15)—INTERLOCUTORY ORDER—MOTION FOR DISMISSAL.

An order overruling a motion for the striking out of a statement of claim and the dismissal of an action based thereon against a principal after judgment had been recovered against the agent is "final in its nature," and not "merely interlocutory" within the meaning of sec. 40 (2) of the County Courts Act, R.S.O. ch. 59, from which an appeal properly lies.

M. Brennen & Sons v. Thompson, 22 D.L.R. 375, 33 O.L.R. 465, 8 O.W.N. 206.

[Followed in *Davis Acetylene Gas Co. v. Morrison*, 23 D.L.R. 871.]

(§ I B-15)—SEPARATION DE CORPS—INTERLOCUTORY JUDGMENT FOR TEMPORARY MAINTENANCE.

There is no appeal to the Court of Review from an interlocutory judgment delivered by the Superior Court in an action en séparation de corps granting a temporary elementary maintenance and a provision for costs.

Danbureau v. Beausoleil, 47 Que. S.C. 393.

(§ I B-15)—INTERLOCUTORY JUDGMENT—MOTION TO STRIKE OUT ALLEGATION IN REPLY.

An interlocutory judgment, dismissing a motion asking that the allegations of fact in a reply to a defence may be struck out as illegal and tending to reform the action, is not susceptible of appeal within the terms of art. 46 of the Code of Procedure.

Beauchemin v. Versailles, etc., 24 Que. K.B. 549.

(§ I B-16)—INSCRIPTION IN REVIEW—JUDGMENT DECLARING SEIZURE BINDING—GARNISHMENT.

A judgment of the Superior Court declaring a seizure by garnishment binding is not a final judgment; and an inscription in review made of such judgment without leave of the Court may be dismissed on motion.

Kaine v. Morgan, 48 Que. S.C. 424.

(§ I B-16)—ORDERING ARREST OF BAILIFF FOR FAILURE TO MAKE RETURN—INSCRIPTION IN REVIEW.

A judgment, authorizing the curator to a judicial abandonment of property to continue certain proceedings and granting a rule nisi for arrest of a bailiff who has not made his return into Court of the money, is not a final judgment and cannot de plano be inscribed in the Court of Review.

Laurentides Brique et Sable Co. v. Charron, 48 Que. S.C. 4.

(§ I B-18)—HOMOLOGATION OF ARBITRATORS' REPORT.

A judgment of the Superior Court homologating an arbitrators' report of the amount of damages caused to property by a municipality is interlocutory from which no appeal "de plano" lies to the Supreme Court of King's Bench without leave.

Riopelle v. City of Montreal, 24 D.L.R. 511, 24 Que. K.B. 148.

C. CRIMINAL CASES.

(§ I C-25)—REFUSAL OF CERTIORARI IN SUMMARY CONVICTION.

No appeal lies in British Columbia from the refusal of a certiorari in respect of a summary conviction under the Criminal Code.

Rex v. Kwong Yick Tai, 22 D.L.R. 323, 24 Can. Cr. Cas. 28, 21 B.C.R. 127, 8 W.W.R. 808.

(§ I C-25)—AGGRIEVED PARTY IN SUMMARY CONVICTION.

The effect of the words "the prosecutor or complainant as well as the defendant" which are used in Cr. Code, sec. 749, in reference to the appeal given to "any person who thinks himself aggrieved" is to limit the right of appeal from the dismissal of an information in a summary conviction proceeding to the prosecutor or complainant.

Gates v. Renner, 24 Can. Cr. Cas. 122, 9 W.W.R. 190.

(§ I C-25)—QUESTION OF LAW—CORROBORATIVE EVIDENCE.

Where corroborative evidence is not required by statute and there is nothing to shew that the Judge trying a criminal charge without a jury had misdirected himself upon a matter of law, it is irregular to reserve for the Court of Appeal the question whether the evidence disclosed sufficient corroboration of an accomplice's evidence, such not being in such circumstances a "question of law" within Cr. Code, sec. 1014. [*R. v. Bechtel*, 5 D.L.R. 497, and 9 D.L.R. 552;

19 Can. Cr. Cas. 423, and 21 Can. Cr. Cas. 40, referred to.]

Rex v. McClain, 23 D.L.R. 312, 23 Can. Cr. Cas. 488, 8 A.L.R. 73, 7 W.W.R. 1134, 30 W.L.R. 388.

(§ I C—25)—QUESTION OF LAW RESERVED.

A question depending upon the weight or insufficiency of the evidence where there is legal evidence on the point cannot properly be made the subject of a reserved case, although where the evidence merely points to a suspicion of guilt and lacks the material ingredients necessary to constitute proof of the offence the question becomes one of the lack of legal evidence to support it (which is a question of law) rather than one as to the weight of evidence. [R. v. McIntyre, 3 Can. Cr. Cas. 413, 31 N.S.R. 422; R. v. Winslow, 3 Can. Cr. Cas. 215, 12 Man. L.R. 649, referred to.]

Rex v. Howe, 24 Can. Cr. Cas. 215, 42 N.B.R. 378.

(§ I C—25)—STATED CASE IN REVIEW OF SUMMARY CONVICTION—NO FURTHER APPEAL.

Where an appeal by stated case from a summary conviction and forfeiture of a recognizance to keep the peace, has been taken on a point of law under Cr. Code, sec. 761, there is no further appeal from the decision affirming such conviction and forfeiture; Cr. Code, secs. 1013 et seq., do not give jurisdiction to the Court of Criminal Appeal to grant leave to appeal and to receive a case stated by the Superior Court of Criminal Jurisdiction hearing the appeal from the magistrate's decision.

Waller v. The King, 24 Can. Cr. Cas. 393, 24 Que. K.B. 127.

(§ I C—25) — SUMMARY CONVICTION — DISTRICT COURTS.

The Court has not to take judicial notice of the distance from one place to another, and the appellant has therefore to prove on an appeal in Saskatchewan under Cr. Code, sec. 749, sub-sec. (f), from a summary conviction, that the District Court sittings for which he gives notice are the nearest to the place where the cause of the information or complaint arose.

Collison v. Kokatt, 24 Can. Cr. Cas. 151, 8 S.L.R. 167, 32 W.L.R. 245, 8 W.W.R. 561.

(§ I C—25) — POLICE MAGISTRATE — ORDER MADE UNDER MASTERS AND SERVANTS ORDINANCE—RIGHT OF APPEAL—SUMMARY CONVICTIONS.

Foster v. Hope, 22 D.L.R. 906, 8 W.W.R. 997, 31 W.L.R. 697.

(§ I C—26)—SUMMARY CONVICTION—PROVINCIAL LEGISLATIVE AUTHORITY OVER OFFENCE.

The right of appeal in a summary conviction matter conferred by sec. 749 et seq. of the Cr. Code is limited by the effect of Cr. Code, sec. 706, to matters over which the Parliament of Canada has legislative author-

ity; this refers to the Dominion Parliament and, in the absence of provincial legislation adopting the Code provisions as to appeal or making other provision therefor, an appeal will not lie from the dismissal of a charge under a statute of the former Province of Canada in force in the present Province of Quebec which relates wholly to matters over which the Quebec Legislature now has exclusive jurisdiction. [Reg. v. Joseph, 6 Can. Cr. Cas. 144, 11 Que. Q.B. 211; R. v. Superior; Superior v. Montreal, 3 Can. Cr. Cas. 379, 9 Que. Q.B. 138; R. v. Racine, 3 Can. Cr. Cas. 446, 9 Que. Q.B. 134; Lecours v. Hurtubise, 2 Can. Cr. Cas. 521, 8 Que. Q.B. 439, referred to.]

Burroughs v. Paradis, 24 Can. Cr. Cas. 343, 24 Que. K.B. 318.

(§ I C—28)—RESERVED CASE—QUESTION OF LAW.

The trial Judge should not grant a reserved case under Cr. Code, sec. 1014, unless he has some doubt upon the point sought to be raised. [R. v. Létang, 2 Can. Cr. Cas. 505; R. v. Brindamour, 11 Can. Cr. Cas. 315, followed.]

Rex v. Batterman, 24 Can. Cr. Cas. 351, 34 O.L.R. 225, 8 O.W.N. 554.

D. MODES OF REVIEW.

(§ I D—30)—ORDERS OF LOCAL MASTER IN INTERPLEADER—NOTICE.

A claimant who is served with notice of appeal from an order made by a Local Master in connection with an interpleader action in which he is interested, but who has given no notice of appeal from the order, may be heard in appeal. Such appeal is a rehearing and the whole case can be gone into. [Chitty's Archbold's Pleading, p. 1417, and Shearer v. Trimble, an unreported decision of Newlands, J., April 1, 1910, followed.]

Macdonald v. Nicholson, 31 W.L.R. 510, 8 S.L.R. 187.

(§ I D—30)—EX PARTE ORDER FOR INJUNCTION—NOTICE.

An appeal from an ex parte order made at Chambers granting a mandatory injunction on the ground that the Judge acted without jurisdiction was refused, because the appellant had not, before taking his appeal, applied to the Judge to vary or rescind his order, and it was held that the necessity for such an application was not obviated by O. 58, r. 3, of the Judicature Act, 1909, giving an appeal on notice from any judgment final or interlocutory, and providing that "every judgment or decision made by a Judge in Court or in Chambers, except orders made in the exercise of such discretion as by law belongs to him, may be set aside or discharged upon notice by the Court." [Bell v. Moffat, 18 N.B.R. 151, and Jackson v. McLellan, 19 N.B.R. 494, not followed.]

St. John R. Co. v. City of St. John, 43 N.B.R. 498.

II. Jurisdiction of particular Courts.

A. OF SUPREME COURT OF CANADA.

(§ II A1—35)—CANADA SUPREME COURT—APPEALS TO—ACTION ON MECHANIC'S LIEN.

Under the Mechanics' Lien Act (B.C.) an action to enforce a mechanic's lien may be maintained only in a County Court; consequently there can be no appeal to the Supreme Court of Canada from the decision of the Court of Appeal, B.C., on appeal from such County Court. [Champion v. World Building Co., 18 D.L.R. 555, appeal therefrom quashed.]

Champion v. World Building, 22 D.L.R. 465, 50 Can. S.C.R. 382, 7 W.W.R. 1162.

(§ II A1—35)—JURISDICTIONAL AMOUNT FIRST DETERMINED.

Where a sum of \$125 only is in dispute, the amount is insufficient to support the jurisdiction of the Supreme Court of Canada under sec. 37 (b) of the Supreme Court Act. The fact that in the statement of claim \$500 damages were asked for and that a new trial might possibly be ordered would not justify the entertaining of the appeal. [Monette v. Lefebvre, 16 Can. S.C.R. 387, referred to.] Where the amount in dispute in the County Court far exceeds \$250, the Court cannot *mero motu* do more than assume that the original claim is what must determine the point of jurisdiction. (Per Idington, J.)

Hearn v. Nelson, 8 W.W.R. 99.

B. OF EXCHEQUER COURT OF CANADA.

(§ II B—45)—APPEAL FROM INTERLOCUTORY ORDER—ADMIRALTY.

Where a mode of appeal is prescribed by statute such procedure must be followed in its entirety. Where the appellant on appeal from the order of a Local Judge in Admiralty to the Exchequer Court to obtain the permission of such Local Judge, or the Judge of the Exchequer Court, for such appeal being taken, the appeal was dismissed for not having complied with the requirements of the statute. [Supervisors v. Kennicott, 94 U.S. 498, referred to.]

Re 251 Bars of Silver & Canadian Salvage Assn. (No. 1), 15 Can. Ex. 367.

C. OF PROVINCIAL COURTS.

(§ II C 1—50)—MASTER'S ORDERS IN LAND ACTIONS—POWER OF APPELLATE JUDGE.

A Judge on appeal from a Master has the like discretionary powers, under Rules 326, 312 and 3 (Alta.), as the Court on an appeal from a Judge, and he may therefore rescind a Master's order directing a rescission of a land agreement and grant leave for an alternative remedy.

Shepard v. Astley, 23 D.L.R. 97, 8 W.W.R. 1033, 31 W.L.R. 692.

(§ II C 4—65)—JURISDICTIONAL AMOUNT—APPEAL FROM TAX ASSESSMENT.

Re Ontario and Minnesota Power Co. &

Fort Frances, 22 D.L.R. 885, 34 O.L.R. 365, 9 O.W.N. 1.

(§ II C 4—68)—TO PRIVY COUNCIL—JURISDICTIONAL AMOUNT—LITIGATION OF SIMILAR CASES.

Veilleux v. Boulevard Heights, 24 D.L.R. 881, 31 W.L.R. 10, affirming 20 D.L.R. 858, 8 A.L.R. 16.

[Appeal to Can. Sup. Ct. dismissed, Nov. 2, 1915.]

III. Transfer of cause; parties; time limitations.

D. MODE; CONDITIONS; REGULATIONS.

(§ III D—86)—STATUTORY REQUIREMENTS—AFFIDAVIT OF MERITS—GAME ACT.

An appeal under the B.C. Game Act, 1914, ch. 33, is not competent unless the statutory conditions of sec. 56 as to making an affidavit of merits as well as the conditions imposed by the Summary Convictions Act, B.C., have been strictly complied with; and the defendant's affidavit of merits, stating that he did not commit the offence charged, must also negative the charge in the terms used in the conviction to comply with sec. 56 of the Game Act.

Rex v. Marshall, 24 Can. Cr. Cas. 180, 31 W.L.R. 702.

E. CITATION; NOTICE; APPEARANCE.

(§ III E—91)—SUMMARY CONVICTION MATTER—NOTICE.

A notice of appeal taken in a summary conviction matter under Cr. Code, sec. 749, by a person entitled to appeal thereunder, need not state on its face that the appellant is a "person aggrieved" nor recite such facts as would shew legal grounds for his being aggrieved. [Rex v. McKay, 21 Can. Cr. Cas. 212, 10 D.L.R. 820, 23 W.L.R. 369, followed.]

Gates v. Renner, 24 Can. Cr. Cas. 122, 9 W.W.R. 190.

(§ III E—91)—SUMMARY CONVICTION—PLACE OF SITTINGS—DISTRICT COURTS.

An appeal from a summary conviction in Saskatchewan is by Cr. Code, sec. 749, to be taken to the sittings of the District Court held nearest to the place where the cause of the information or complaint arose, and the distance is to be measured in a straight line without regard to the circumstance that the sittings held at a place which was not the nearest in a straight line would be more convenient of access having regard to the recognized means of travel; the jurisdiction of the District Court is limited by Code sec. 749 to the sittings which are in fact the nearest. [Rex v. Georgett, 23 Can. Cr. Cas. 341, reversed on this point.]

Fauchaux v. Georgett; Rex v. Georgett (No. 2), 25 Can. Cr. Cas. 76, 8 S.L.R. 325, 32 W.L.R. 863, 9 W.W.R. 458.

(§ III E-91)—SERVICE OF NOTICE OF—VACATION—FORECLOSURE ACTION BETWEEN VENDOR AND PURCHASER—SUB-PURCHASERS AS PARTIES.

Hueston v. Gemmel, 25 D.L.R. 772, 8 S.L.R. 330, 9 W.W.R. 192, 32 W.L.R. 569.

F. TIME; EXTENSION.

(§ III F-95) — TIME FOR — EXTENSION — WHEN REFUSED.

Cragg v. Keane, 24 D.L.R. 885, 9 A.L.R. 82, 9 W.W.R. 148, 32 W.L.R. 422.

(§ III F-95)—EXTENDING TIME TO APPEAL—SOLICITOR NOT GIVING NOTICE.

On an application under sec. 4 of the Court of Appeal Act, 1913, to extend the time for giving notice of appeal owing to a slip of the solicitor in not giving notice until after the expiration of the time allowed under marginal rule 879:—Held, that there was not sufficient ground for granting special leave under said section. Per Martin, J.A.: In all cases of application for extension of time to appeal under this rule very exceptional circumstances must be shewn. It is not the ordinary case when relief from slips of solicitors can be compensated with costs, because, in this particular class of case, there is a limit placed upon the time within which the judgment that the successful party has obtained can be taken from him and that is the principle which distinguishes it from ordinary cases of extension of time. Per McPhillips, J.A.: Where a slip of a solicitor may result in loss of property to a client, relief should be granted.

McEwan v. Hesson, 20 B.C.R. 94, affirming 17 D.L.R. 99.

(§ III F-95)—APPEAL NOT SET DOWN—EXTENSION OF TIME.

Where notice of appeal has been given for a certain sittings of the Court for which the case has not been set down, the Court may postpone the hearing until the following sittings. The proper practice is to apply to the Court for an extension of time, and then serve notice for the following sittings.

Gilbert v. Southgate Logging Co., 21 B.C.R. 7, 7 W.W.R. 1133.

(§ III F-95)—APPEAL FROM AWARD—EXTENSION OF TIME—NOTICE.

The time allowed for appealing from an award under 4 Geo. V., ch. 32 (An Act to amend "The New Brunswick Railway Act," C.S. 1903, ch. 91), may be enlarged on an application made after the expiration of the time allowed by the Act under O. 64, r. 7, but such application should be on notice under O. 52, r. 3, and not ex parte.

St. John & Que. R. Co. v. Fraser, 43 N.B.R. 188.

(§ III F-95)—FAILURE TO SET DOWN IN TIME—ORDER EXTENDING TIME—SPECIAL CIRCUMSTANCES.

Re Hunt and Bell, 8 O.W.N. 467.

G. SECURITY.

(§ III G-101) — CONVICTION ADJUDGING PENALTY WITH IMPRISONMENT IN DEFAULT —FAILURE TO FURNISH RECOGNIZANCE.

Where, by a conviction, a penalty or sum of money is adjudged to be paid, and imprisonment upon default of payment is directed, the accused seeking to appeal must enter into the recognizance provided for by sec. 750 (c) of the Criminal Code, and payment of the fine to the prosecutor instead of entering into the recognizance will not support an appeal from the conviction.

Rex ex rel. Johnson v. Mock Sing, 32 W.L.R. 649, 25 Can. Cr. Cas.

(§ III G-106)—TIME FOR GIVING SECURITY—EXTENSION—"SPECIAL CIRCUMSTANCES."

Réaume v. City of Windsor, 25 D.L.R. 846, 34 O.L.R. 384, 9 O.W.N. 26.

IV. Record and case in Appellate Court.

D. AMENDING; PERFECTING.

(§ IV D-126)—CRIMINAL CASE STATED—FORMAL SIGNATURE WAIVED.

On a case directed to be stated under Cr. Code, sec. 1016, following the refusal of a reserved case, the Court of Appeal may proceed with the hearing of the questions which it has directed to be stated without sending them to be formally signed by the Judge below if the Crown waives technical objections; the Court of Appeal may in such case direct that the record and evidence may be referred to by the Crown in contradiction of any fact incorrectly set forth in the stated case submitted by the accused.

Rex v. Belyea, 24 Can. Cr. Cas. 395, 43 N.B.R. 375.

F. AFFIDAVITS.

(§ IV E-130) — CROSS-EXAMINATION OF — LEAVE TO.

Newton v. Bauthier, 24 D.L.R. 890, 21 B.C.R. 4, 8 W.W.R. 930.

F. EVIDENCE; ADDING FRESH EVIDENCE.

(§ IV F-135)—PROCEEDINGS BEFORE MASTER FOR RECEIVER'S FEES—FRESH EVIDENCE—AFFIDAVITS.

An appeal under r. 622 (Saek.) is a rehearing, on which fresh affidavits purporting to establish the proceedings before a Master respecting compensation to a receiver may be used on an appeal from the Master to a Judge in Chambers.

Campbell v. Arndt, 24 D.L.R. 699, 8 S.L.R. 320, 9 W.W.R. 57, 32 W.L.R. 249.

(§ IV F-135)—DIVISION COURT APPEALS—RECORD — EVIDENCE — AGREED STATEMENT OF FACTS.

The Appellate Court cannot review the judgment of a Division Court under secs. 127 and 128 of the Division Courts Act, R.S.O. 1914, ch. 63, unless the evidence taken by the Division Court Judge is before it; a certificate of the Judge as to what was proved

before him might take its place, but a statement of facts agreed upon by the parties is not sufficient.

Luttrell v. Kurtz, 25 D.L.R. 240, 34 O.L.R. 586, 9 O.W.N. 151.

[See also 21 D.L.R. 710, 33 O.L.R. 203.]

(§ IV F—136)—RECORD—DOCUMENTARY EVIDENCE—LOST LETTER—PROOF BY AFFIDAVIT—ART. 123 C.C.

Simard v. Dubord, 25 D.L.R. 857, 24 Que. K.B. 350.

(§ IV F—136) — LOST EXHIBITS — RECONSTRUCTION OF RECORD.

If exhibits or pleadings in a case pending before the Court of Appeals disappear, an order will be given by that Court that the parties, the prothonotary of the Superior Court, the clerk of the Court of Appeals, make special search for the documents missing and that, if same cannot be found, the record be sent back to the Superior Court, so that an order may there be given that each of the parties reconstitute the documents and exhibits filed by them. All proceedings in the case will be suspended, until the record has been duly reconstituted as aforesaid.

Locomotive & Machine Co. of Montreal v. Gardiner, 24 Que. K.B. 95.

H. INSTRUCTIONS.

(§ IV H—145) — CRIMINAL CASE — JUDGE'S CHARGE TO THE JURY.

The statutory power conferred by sec. 1017 of the Cr. Code, whereby the Court of Appeal may, on any appeal or application for a new trial, refer to such other evidence of what took place at the trial as it thinks fit in addition to what is included in the Judges' notes applies only to the notes taken by the Judge presiding at the trial, and not to the address made by the Judge to the jury, the stenographic report of which he had certified. [Compare *R. v. Angelo*, 22 Can. Cr. Cas. 304, 16 D.L.R. 126, 19 B.C.R. 261, as to Judge's certificate of evidence not shewn on stenographer's notes.]

Di Lena v. The King, 24 Can. Cr. Cas. 301, 24 Que. K.B. 262.

V. Objections and exceptions; raising question in lower Court.

(See previous Annual Digests.)

VI. Preliminary motions; dismissal; abatement; abandonment.

A. IN GENERAL.

(§ VI A—280)—APPEAL BOOK—APPLICATION TO STRIKE OUT.

This was an application to strike out certain pages of the appeal book, the appeal book having been settled by the registrar of the trial Court pursuant to sec. 24 of the Court of Appeal Act, R.S.B.C. 1911, ch. 51, there having been no objection taken before the registrar of the trial Court to the appeal book as settled, nor any appeal from the ruling of the registrar to a Judge of the trial

Court. Counsel for appellant took the preliminary objection that the Court had no jurisdiction, citing sec. 24 of the Court of Appeal Act which directed that the appeal book should be settled by the registrar of the trial Court:—Held, that the Court had no jurisdiction; that the proper course for the applicant to have pursued was to object to the registrar's settlement of the appeal book, and to appeal from the registrar's settlement to a Judge of the trial Court, and to appeal from the order of the Judge of the trial Court to this Court.

Patterson v. Hodges & Rowe, 8 W.W.R. 1080.

B. GROUNDS FOR DISMISSAL.

(§ VI B—287)—QUASHING APPEAL FROM DISMISSAL OF SUMMARY CONVICTION—STATUS OF APPELLANT.

It is ground for quashing an appeal under Cr. Code, sec. 749, from the dismissal of a summary conviction proceeding that the appellant has not shewn upon the appeal that he is the complainant and so within the limitation of Code sec. 749 as a party aggrieved by the order of dismissal; the Court to which the appeal is taken under a notice of appeal which does not state the appellant to be the complainant in the proceedings below is not bound to look at the information transmitted under Cr. Code, sec. 757, to ascertain whether the appellant was such complainant if the information was not put in evidence on the appeal.

Gates v. Renner, 24 Can. Cr. Cas. 122, 9 W.W.R. 190.

(§ VI B—288)—MOTION FOR LEAVE TO APPEAL IN CRIMINAL CASE.

Where the accused files a motion before the Court of Appeal for leave to appeal under Cr. Code, sec. 1015, following his conviction for an indictable offence, but makes default in proceeding with such motion, the Court of Appeal will hear counsel for the Crown and make such disposition of the motion in the absence of the accused as it sees fit.

Abeles v. The King, 24 Can. Cr. Cas. 308, 24 Que. K.B. 260.

VII. Hearing and determination.

A. IN GENERAL; RULES OF DECISION.

(§ VII A—290) — FORUM — REFERENCE TO COUNTY COURT JUDGE FOR TRIAL OF ACTION—JUDGE TREATING REFERENCE AS MADE TO HIM AS LOCAL MASTER—APPEAL FROM REPORT—JURISDICTION OF HIGH COURT DIVISION—MORTGAGE—RATIFICATION — PROMISSORY NOTE — ESTOPPEL — REPORT VARIED IN ONE RESPECT—COSTS.

Knowlton v. Union Bank of Canada, 7 O.W.N. 817, 8 O.W.N. 219.

I. DISCRETIONARY MATTERS.

(§ VII I—345)—REVIEW OF DISCRETION OF TRIAL JUDGE.

The Appellate Court will not review the discretion of the trial Judge unless there has

been a disregard of principle or misapprehension of facts, even where leave to appeal has been granted. [*Young v. Thomas*, [1892] 2 Ch. 134, followed.]

Garipey v. Greene, 23 D.L.R. 797, 8 A.L.R. 463, 8 W.W.R. 651, 32 W.L.R. 194.

[Referred to in *Livingstone v. Edmonton*, 25 D.L.R. 313, 314.]

(§ VII I—345)—APPOINTMENT OF SEQUESTATOR.

A Court of Appeal will not interfere in a matter of discretion like the one of the nomination of a judicial sequestrator, unless it is convinced there has been an abuse of discretion.

Cohen v. Edelstone, 24 Que. K.B. 145.

(§ VII I—346)—COSTS.

The Court of Review will not interfere with the judgment of the Court of first instance in the exercise of its discretion in the matter of costs, when there is no other reasonable ground for its doing so.

Fr chet te v. Demers, 47 Que. S.C. 7.

(§ VII I 3—355)—LEAVE TO FILE DEFENCE OR CONTESTATION AFTER DEFAULT.

The right to permit a defendant, who is in default of pleading in contesting a proceeding, to file a defence or a contestation, is left to the discretion of the Judge who should grant or refuse it according to the circumstances. A Court of Appeal will intervene in such a matter only on very strong grounds.

M nard v. Choini re, 24 Que. K.B. 528.

(§ VII I 5—372)—DISCHARGE OF RECEIVER—EX PARTE ORDER.

An ex parte order releasing and discharging a receiver and his sureties will not be interfered with on appeal before an opportunity is given to the Judge to amend the order after hearing both sides. [*Day v. Vinson*, 9 L.T. 654, 723, followed.]

Campbell v. Arndt, 24 D.L.R. 699, 8 S.L.R. 320, 9 W.W.R. 57, 32 W.L.R. 249.

(§ VII I 6—375)—GRANTING TRIAL BY JURY.

Where the pleadings and facts disclosed by the affidavits before the trial Judge vest in him jurisdiction to consider and decide whether the action can be most conveniently tried with or without a jury under O. 36, r. 4 (N.B.), and he exercises his discretion and determines the question, the Supreme Court on appeal will not interfere with that discretion except in case of gross error.

Clark v. St. Croix Paper Co., 24 D.L.R. 513, 43 N.B.R. 225.

(§ VII I 6—375)—ACTION FOR NEGLIGENCE—DISCRETION AS TO DISPENSING WITH NOTICE.

When a statute confers on a Court the right to exercise a discretion, a Court of Appeal will only intervene if there is evident error as to the facts or if the principle of law propounded is wrong. If the law gives to the Judge a discretion to dispense with the notice of action in case of a claim for damages on account of bodily injuries resulting from an accident, the difficulties that the

plaintiff meets in assembling his proof and in furnishing the details of his claim, as well as the fact that he is not aware of the nature and extent of his injuries, are sufficient reasons for the exercise of the discretion of the Court, and this discretion thus properly exercised will not be interfered with on appeal when otherwise the other party is not thereby prevented from proving his case.

Town of Coaticook v. Laroche, 24 Que. K.B. 339.

(§ VII I 7—387)—EXTENDING TIME FOR MOTION TO SET ASIDE EXECUTION.

The Appellate Court cannot interfere with the discretion exercised by the Judge below in extending the time for moving to set aside an order for leave to issue execution.

Joss v. Fairgrieve, 32 O.L.R. 117, 7 O.W.N. 184.

J. QUESTIONS NOT RAISED BELOW.

(§ VII J—390)—MISDIRECTION OF JUDGE.

Where a party has not used the opportunity at the trial nor in the first Court of Appeal, it is too late, in the absence of special circumstances, to urge misdirection of the Judge upon a subsequent appeal to a higher Court. [*Creveling v. Can. Bridge Co.*, 20 D.L.R. 528, 20 B.C.R. 137, reversed.]

Creveling v. Can. Bridge Co., 21 D.L.R. 662, 51 Can. S.C.R. 216, 8 W.W.R. 619.

L. REVIEW OF FACTS.

(§ VII L 1—470)—ITEMS OF ACCOUNT—QUESTIONS OF FACT—FINDINGS OF COUNTY COURT JUDGE—EVIDENCE TO SUPPORT.

Goodison v. Drennan, 8 O.W.N. 253.

(§ VII L 1—473)—APPEAL FROM AWARD—JURISDICTION TO SET ASIDE OR REMIT.

The Court hearing an appeal from an award under sec. 114 of the Railway Act, Alta., 1907, ch. 8, has jurisdiction on setting aside the award and remitting the case to the arbitrators to dispose of the costs of the abortive arbitration proceedings. [*Cedars Rapids Mfg. Co. v. Lacoste*, 16 D.L.R. 168, 83 L.J.P.C. 162, referred to.]

Can. North. West. R. Co. v. Moore, 23 D.L.R. 646, 8 A.L.R. 379, 7 W.W.R. 1327, 30 W.L.R. 676.

(§ VII L 1—473)—APPEAL FROM AWARD—IMPROPER ADMISSION OF EVIDENCE.

Where the arbitrators admitted, as evidence of value, matters which the Court on appeal decided were inadmissible and which may have materially affected the arbitrators' finding, the Court hearing an appeal from the award is not bound under sec. 114 of the Railway Act, Alta. 1907, ch. 8, to decide the question of fact raised by the appeal as in a case of original jurisdiction; it is only where there is nothing but a question of fact involved that the Court is bound under sec. 114 to decide the same upon the evidence taken before the arbitrators instead of setting aside the award or remitting the case. [*Atlantic and N.W.R. Co. v. Wood*, [1895] A.C. 257; *Cedars Rapids Mfg.*

Co. v. Lacoste, 16 D.L.R. 168, 83 L.J.P.C. 162, considered.]

Can. North. West. R. Co. v. Moore, 23 D.L.R. 646, 8 A.L.R. 379, 7 W.W.R. 1327, 30 W.L.R. 676.

(§ VII L 2—476)—FINDINGS OF JURY—VOLENS.

Where the issue of volens has been fought out at the trial and clearly presented to the jury in the form of a specific question which they have not answered, the Appellate Court has no power to substitute itself for the jury to make such finding.

McPhee v. Esquimalt & Nanaimo R. Co., 23 D.L.R. 561, 8 W.W.R. 1319, 32 W.L.R. 125.

(§ VII L 2—476)—REVIEW OF VERDICT—PRINCIPLE APPLICABLE IN APPELLATE COURT.

[Simpchechen v. Montreal Tramways Co., 46 Que. S.C. 77, corrected.]

Simpchechen v. Montreal Tramways Co., 22 D.L.R. 902, 46 Que. S.C. 350.

(§ VII L 2—480)—DAMAGES—REVIEW BY APPELLATE COURT.

Unless the conclusions to which the Judge or jury arrives in assessing damages are clearly erroneous, the quantum should not be interfered with on appeal. [McHugh v. Union Bank, [1913] A.C. 299, 10 D.L.R. 562, applied.]

Kerley v. City of Edmonton, 21 D.L.R. 308, 8 A.L.R. 335, 7 W.W.R. 1352, 30 W.L.R. 553.

(§ VII L 2—480)—REVIEW OF DAMAGES FOUND BY JURY.

Whatever may be the amount of damages granted by a jury in their verdict, the Court of Appeal will not interfere with the judgment rendered on that verdict by granting a new trial or reducing the amount of damages, if it is not evident that the jurymen have been moved by improper motives or have erred and if it does not appear that the verdict could not be reasonably rendered if acting according to the evidence given.

Canadian Pacific R. Co. v. Walsh, 24 Que. K.B. 185.

(§ VII L 3—485)—REVIEW OF FINDINGS OF COURT—HEARING OF INTERIM INJUNCTION.

In reviewing upon appeal an interim injunction order, whereby the injunction was continued until the trial unless the defendant gave security for an accounting, the Appellate Court may direct that the findings on any question of law or fact or upon the construction of the documents by the Judge who made the injunction order shall not be binding on the parties at the trial of the action.

Pulford v. Burmeister, 23 D.L.R. 178.

(§ VII L 3—485)—REVIEW OF FINDINGS OF COURT—ACCEPTANCE OF OFFER FOR DRIVING LOGS—STORM BOOMS.

The findings of a trial Judge that an offer to drive logs from a certain point, and to

deliver them from that point in storm booms at a smaller price, was only accepted as to the driving and not as to the storm booms, based on sufficient and relevant evidence to support his conclusion, will not be reviewed on appeal.

Holt Timber v. McCallum, 25 D.L.R. 445.

(§ VII L 3—485)—OPPOSITION TO SEIZURE OF WIFE'S PROPERTY—REVIEW OF COURT'S FINDINGS.

In the case of opposition taken by the wife for withdrawal from seizure of household furniture, even when the Court of Review should find it appearing that a piece of furniture of trifling value belongs to the husband, it will not reverse for that reason the judgment of the Superior Court; de minimis non curat lex.

Goulet v. Gratton, 47 Que. S.C. 465.

(§ VII L 3—485)—EVIDENCE—FINDINGS OF FACT OF TRIAL JUDGE—MOTION TO RE-OPEN HEARING OF APPEAL.

Davidovich v. Swartz, 8 O.W.N. 222.

(§ VII L 3—492)—FINDINGS OF COURT—AGENCY.

An Appellate Court has the legal power to review a finding of fact made by the trial Judge upon contradictory testimony, as to whether a son in business with his father acted as agent for the firm.

Western Motors Ltd. v. Gilfoy, 25 D.L.R. 378, 9 W.W.R. 770.

(§ VII L 3—497)—ACTION FOR NEGLIGENCE AGAINST BAILEE—DEATH OF HIRED HORSE CAUSED BY NEGLIGENT DRIVING—REVIEW OF FINDINGS OF COURT—INSUFFICIENT EVIDENCE TO SUSTAIN VERDICT FOR PLAIN-TIFF.

Feindel v. Gunn, 25 D.L.R. 738.

(§ VII L 4—510)—ARBITRATOR'S AWARD—HOW REVIEWED—REASONS NOT APPARENT OF RECORD.

The reasons or principles which guided arbitrators in making an award not contained in the award or supplemented therewith will not be reviewed on appeal.

St. John & Quebec R. Co. v. Fraser Ltd., 24 D.L.R. 339, 43 N.B.R. 388.

M. WHAT ERRORS WARRANT REVERSAL.

(§ VII M 1—520)—CRIMINAL APPEALS—SUBSTANTIAL WRONG.

It is for the appellant under sec. 1019 of the Cr. Code to establish that there has been a substantial wrong or miscarriage so as to entitle him to relief because of something done at the trial which was not in strict accordance with the law. [Allen v. The King, 18 Can. Cr. Cas. 1, 44 Can. S.C.R. 331, referred to; Criminal Appeal Act (Imp.) 1898, distinguished.]

The King v. Romano, 21 D.L.R. 195, 24 Can. Cr. Cas. 30, 24 Que. K.B. 40.

(§ VII M 3—535)—QUASHING CONVICTION ON APPEAL—CONFESSION, IMPROPERLY ADMITTED.

Where the whole circumstance negatives

any reasonable inference that the accused freely and voluntarily made the confession or admission put in evidence against him, the uncontradicted evidence being all one way to shew that the accused was terrorized into making it, a conviction made in reliance upon such confession will be set aside on an appeal by case reserved; no order will be made remitting the case for a new trial if in the opinion of the Court of Appeal the interests of justice do not require it. [Rex v. Lai Ping, 8 Can. Cr. Cas. 467, 11 B.C.R. 102, R. v. Mulvihill, 22 Can. Cr. Cas. 354, referred to.]

Rex v. De Mesquito, 24 Can. Cr. Cas. 407, 9 W.W.R. 113, 32 W.L.R. 368.

(§ VII M 3—542)—**MISJOINDER OF COUNTS—ABORTION—MANSLAUGHTER.**

Where a count under Code sec. 303 for unlawfully administering noxious drugs to procure a miscarriage are joined with a count for manslaughter for the death alleged to have been occasioned thereby, such added count should be withdrawn if the prosecution uses the woman's dying declaration as evidence in the manslaughter charge, and a new trial will be ordered where this was refused and the jury found the accused guilty of unlawfully administering but disagreeing on the manslaughter count.

Rex v. Inkster, 24 Can. Cr. Cas. 294, 8 S.L.R. 233, 8 W.W.R. 1098, 31 W.L.R. 782.

(§ VII M 7—640)—**SUBSTANTIAL WRONG OR MISCARRIAGE—CONSTITUTION OF GRAND JURY.**

In determining whether or not any "substantial wrong or miscarriage" has been occasioned on the trial within the meaning of Cr. Code, sec. 1019, as to criminal appeals, the Appellate Court hearing a case reserved upon an objection to the constitution of the Grand Jury which the trial Judge refused to allow on motion to quash the indictment (Cr. Code, sec. 899) must have regard also to the curative provisions of Cr. Code, sec. 1011, as to the preparation of jury lists and jury panels and to the limitation made by sec. 899 (2) whereby an objection to the constitution of the grand jury is not to be allowed on a motion to quash unless the accused has suffered or may suffer prejudice by the subject matter of such objection. [R. v. Hayes, 9 Can. Cr. Cas. 101, 11 B.C.R. 4, R. v. Brown, 19 Can. Cr. Cas. 237, 45 N.S.R. 473, referred to.]

Rex v. Morrow, 24 Can. Cr. Cas. 310.

VIII. Judgment.

B. RENDERING MODIFIED JUDGMENT.

(§ VIII B—670)—**JURISDICTION TO ENTER JUDGMENT UPON EVIDENCE.**

The Court of Appeal is entitled to give judgment for a defendant although a verdict has already been given by a jury for the plaintiff, there being some evidence to support that verdict, if the Court of Appeal is satisfied that there is all the evidence before it that could be obtained and no reasonable

view of that evidence could justify the verdict for the plaintiff (per McPhillips, J.A.).

Mackenzie v. B.C. Electric R. Co., 8 W.W.R. 956.

D. COSTS; INTEREST; DAMAGES FOR DELAY.

(§ VIII D—684)—**COSTS—DISCRETION OF JUDGE—PROCEEDING ON WRONG PRINCIPLE.**

Notwithstanding sec. 47 of King's Bench Act, Man., which declares that no order as to costs only which by law are left to the discretion of the Court Judge shall be subject to appeal except by leave, the Appellate Court may review a Judge's decision on a question of costs which were left to his discretion where he had proceeded on an erroneous principle or had not exercised a judicial discretion. [Young v. Thomas, [1892] 2 Ch. 134; Civil Service Co. v. General Steam Nav. Co., [1903] 2 K.B. 756, applied.]

Gibson v. Snaith, 21 D.L.R. 716, 25 Man. L.R. 278, 8 W.W.R. 247.

F. CORRECTION.

(§ VIII F—690)—**POWER TO RECALL JUDGMENT FOR CORRECTION.**

An Appellate Court has jurisdiction, after its formal order has been issued, to recall it for the purpose of amending errors or omissions due to oversight or mistake. [Penrose v. Knight, Cout. Dig. 1122; Rattray v. Young, Cout. Dig. 1123; McCaughey v. Stringer, [1914] 1 Ir. R. 73; E. v. E., [1903] P. 88, applied; Prevost v. Bedard, 24 D.L.R. 153, 51 Can. S.C.R. 149, referred to.]

Prevost v. Bedard, 24 D.L.R. 862, 51 Can. S.C.R. 629.

IX. Rehearing (on appeal).

(See previous Annual Digests.)

X. Liability on appeal bond.

(§ X—702)—**STIPULATION AS TO LIABILITY UPON AFFIRMANCE OF JUDGMENT—APPEAL QUASHED—DISCHARGE OF SURETY.**

A surety who signs an appeal bond whereby "he obliged himself that in case the appellant did not effectually prosecute the appeal and does not satisfy the condemnation and pay all the costs and damages adjudged, in case the judgment appealed from is confirmed by the said Court of King's Bench sitting in appeal, then the said surety will satisfy the said condemnation in capital interest and costs up to the sum of \$1,200 on behalf of and as surety for the said defendant" is not responsible under such bond, if the judgment appealed from is not confirmed by the Court of Appeal, but the appeal quashed on motion for want of jurisdiction "ratione materiae." In such case the bond is absolutely null. A bond of suretyship must be constructed strictissimi juris, and its provisions cannot be extended beyond its limits.

Foster v. U.S. Fidelity & Guaranty Co., 24 Que. K.B. 163.

XI. Granting leave to appeal.

(§ XI—720)—ORDERS OF DISTRICT COURT.

Where no special leave has been granted an order made by a District Court Judge, as *persona designata* under the Creditors' Relief Act, R.S.S. ch. 63, is not subject to appeal.

Royal Bank of Canada v. Lee & Girard, 23 D.L.R. 216, 30 W.L.R. 577.

[Affirmed in 23 D.L.R. 219, 8 S.L.R. 17.]

(§ XI—720)—TO PRIVY COUNCIL—LEAVE TO—IMPORTANT QUESTIONS—WORKMEN'S COMPENSATION—COURSE OF EMPLOYMENT.

[Leave to appeal to Privy Council from *Doyle v. Moirs*, 22 D.L.R. 767, 48 N.S.R. 473, refused.]

Doyle v. Moirs, Limited, 24 D.L.R. 899, 49 N.S.R. 242.

(§ XI—720)—EXTENSION OF TIME—TRESPASS TO LAND—CONSTRUCTION OF RAILWAY—MEASURE OF COMPENSATION.

Holmested v. Can. North. R. Co., 24 D.L.R. 894.

[See 20 D.L.R. 577, 7 S.L.R. 200.]

(§ XI—720)—LEAVE TO LIQUIDATOR UNDER WINDING UP ACT—TIME.

Where an action by a creditor against a company in liquidation to have his claim declared privileged, was dismissed by the Superior Court, an appeal taken by the liquidator falls under the jurisdiction of the Winding-Up Act, R.S.C. 1906, ch. 144, arts. 22, 104, and cannot be taken without the leave of the Court, and must be inscribed within the delay fixed by law. An appeal taken without observing these formalities may be rejected on motion.

Stinson Reeb Builders' Supply Co. v. Eastern Trust Co., 24 Que. K.B. 348.

(§ XI—720)—MOTION FOR LEAVE TO APPEAL FROM ORDER OF JUDGE IN CHAMBERS TO APPELLATE DIVISION.

Duncan v. Cooper, 8 O.W.N. 519.

(§ XI—720)—MOTION FOR LEAVE TO APPEAL FROM ORDER OF JUDGE IN CHAMBERS—ADJOURNMENT FOR HEARING BEFORE ANOTHER JUDGE.

Hawes v. Hawes, 8 O.W.N. 566.

(§ XI—720)—ORDER OF JUDGE IN CHAMBERS—LEAVE TO APPEAL FROM r. 507, CL. 3

(B)—PATENT FOR INVENTION—VALIDITY—PLEADING—DEFENCE AND COUNTER CLAIM—JURISDICTION OF SUPREME COURT OF ONTARIO—PATENT ACT. R.S.C. 1906, ch. 61, SECS. 34, 35, 38, 45—JUDICATURE ACT, R.S.O. 1914, ch. 56, SEC. 3.

Berliner Gramophone Co. v. Pollock, 9 O.W.N. 169.

(§ XI—721)—APPEAL TO PRIVY COUNCIL—SUMMARY CONVICTION UNDER TEMPERANCE ACT.

The Court which has affirmed a summary conviction under the Nova Scotia Temperance Act in certiorari proceedings will decline leave to appeal to the Privy Council from that decision to raise the question

whether the Act was not more extensive in its scope than the Legislature had power to enact, if the circumstances in the case in question indicated no probability that the liquor found to have been illegally kept for sale was brought in from another province to be sold outside of Nova Scotia so as to make the question of ultra vires applicable to the facts. [*R. v. Hoare*, 24 Can. Cr. Cas. 279, considered.]

Rex v. Hoare (No.2), 25 Can. Cr. Cas. 87.

APPEARANCE.

Judgment for default of appearance, see Judgment.

(§ I—2)—SPECIALLY ENDORSED WRIT FOR LIQUIDATED DEMAND—AFFIDAVIT.

A defendant on entering his appearance to a specially endorsed writ for a liquidated demand must do more than make affidavit that he has a good defence on the merits; he must shew facts and circumstances on which he relies as a defence so that the Court may judge whether they afford an answer; so where the defendant, suing for the price of goods, sets up a deficiency in quality and quantity, his affidavit should state what reduction he claims on that account.

Carter v. Hicks, 21 D.L.R. 831, 33 O.L.R. 149, 7 O.W.N. 734.

(§ I—3)—SPECIALLY ENDORSED WRIT—AFFIDAVIT—DEFENCE "UPON MERITS."

The affidavit necessary with defendant's appearance to a specially endorsed writ under Ont. C.R. 1913, r. 56, must state that he has a good defence "upon the merits;" it is not sufficient that defendant swears he has a good defence to the action. [*Robinson v. Morris*, 15 O.L.R. 649, followed.]

Leushner v. Linden, 21 D.L.R. 208, 33 O.L.R. 153, 7 O.W.N. 758.

(§ I—5)—CONDITIONAL APPEARANCE—NON-RESIDENT DEFENDANT—JURISDICTION—EFFECT ON BY PLEA TO MERITS.

Richardson v. Allen, 24 D.L.R. 883, 31 W.L.R. 437.

APPRENTICES.

Injuries to apprentices, see Master and Servant; Infants.

(§ I—1)—WHAT CONSTITUTES.

An apprenticeship is a contract in virtue of which a person undertakes to teach another a profession, trade or calling upon certain conditions, within a stipulated time, which contract creates reciprocal obligations between the contracting parties.

Wilston v. G.T.R. Co., 47 Que. S.C. 67.

ARBITRATION.

I. IN GENERAL.

II. ARBITRATORS; UMPIRE.

III. AWARD.

IV. REVIEW OF ARBITRATION.

As to eminent domain and expropriation, see Eminent Domain.

Of insurance loss, see Insurance.
As to measure of damages, see Damages.
Practice under Workmen's Compensation Act, see Master and Servant, V.

Annotation.

Rights of alien enemies to proceed with:
23 D.L.R. 375, 383.

I. In general.

(§ I-2)—PARTNERSHIP DISPUTE—PROVISION IN PARTNERSHIP ARTICLES FOR REFERENCE TO ARBITRATOR—APPOINTMENT BY JUDGE OF HIGH COURT—PERSONA DESIGNATA—CONDITION PRECEDENT.

Re Wood Vallance & Co., 7 O.W.N. 814.

(§ I-2)—CONSENT OF PARTIES TO DISPOSITION OF ALL MATTERS IN QUESTION BY JUDGE AS QUASI-ARBITRATOR—EQUITABLE AWARD—COSTS.

McKinney v. McLaughlin Carriage Co., 7 O.W.N. 702.

(§ I-3)—HOW LOST—DEATH OF ARBITRATOR.

Where in order to ascertain the value of hotel property parties agree to submit the matter to two arbitrators, the death of one such arbitrator after the right of appointment has been exercised by the parties, and there being no provision either in the agreement for submission or by statute enabling the appointment of a successor, brings the whole matter to a standstill, to which secs. 7 and 8 of the Arbitration Act, R.S.M. 1913, ch. 9, have no application, and the right to arbitration is thereby lost. [Yeates v. Caruth, [1895] 2 Ir.R. 146, followed.]

Windebank v. C.P.R. Co., 25 D.L.R. 225, 9 W.W.R. 715, 33 W.L.R. 82.

II. Arbitrators; umpire.

(§ II-10)—QUALIFICATIONS—RELATIONSHIP.

The fact that an arbitrator is related to an owner interested in the proceedings will disqualify him from acting therein notwithstanding the absence of any overt act or conduct indicating prejudice or partiality. [Corp. of Burford v. Chambers, 25 O.R. 663; Vineberg v. Guardian Fire & Life Ass. Co., 19 A.R. (Ont.) 293; Reg. v. Rand, L.R. 1 Q.B. 230; The King v. Sunderland Justices, [1901] 2 K.B. 357, 364; The King v. Justices, 2 Ir. Rep. 293, applied.]

Turnbull v. Rur. Mun. of Pipestone, 24 D.L.R. 281, 8 W.W.R. 982, 31 W.L.R. 595.

(§ II-10)—RESIDENCE OF—APPOINTMENT BY LIEUTENANT-GOVERNOR.

Section 699 of the Municipal Act (Man.) empowering the Lieutenant-Governor-in-Council in expropriation proceedings to nominate an arbitrator resident without the limits of any municipality interested, to act for the party failing to appoint, is imperative and not directory, and the appointment of one resident within the municipality is a contravention of the statute and will affect the validity of the award. [Re Smith & Corp. of Plympton, 12 O.R. 20, applied.]

Turnbull v. Rur. Mun. of Pipestone, 24 D.L.R. 281, 8 W.W.R. 982, 31 W.L.R. 595.

(§ II-10)—SUFFICIENCY OF OATH—AUTHORITY TO ADMINISTER.

Although R.S.Q. 1909, art. 1569, requires the arbitrators in a railway expropriation to be sworn before a Justice of the Peace, the fact that they have taken the oath before a Judge, the prothonotary or a commissioner of the Superior Court, does not avoid their award, these latter functionaries having the right to swear according to the spirit of the Act as well as Justices of the Peace.

Girard v. Ha-Ha-Baie, 47 Que. S.C. 325.

(§ II-10)—EXPROPRIATION PROCEEDINGS—RIGHT OF JUDGE TO APPOINT—NOTICE TO OWNER.

A Judge of the County Court alone has jurisdiction to appoint a sole arbitrator to determine the value of lands taken or required under the provisions of the New Brunswick Railway Act, except when he is personally interested in the lands, in which case a Judge of the Supreme Court has such jurisdiction. Where an owner of land omits to name an arbitrator in expropriation proceedings after notice is served on him as required by the New Brunswick Railway Act, a sole arbitrator cannot be appointed by any Judge until notice of the intended application for such appointment has first been given to the land owner.

St. John & Que. R. Co. v. Anderson, 43 N.B.R. 31.

III. Award.

(§ III-15)—GROUND RENT OF PREMISES FIXED BY AWARD—ACTION FOR VALUE OF USE AND OCCUPATION—FAIR RENTAL VALUE OF PREMISES—EVIDENCE.

MacDonell v. Davies, 8 O.W.N. 48, 315.

(§ III-16)—VALIDITY OF AWARD—EXCESSIVE FEES.

An award which allows an arbitrator fees in excess of the scale allowed by statute must be remitted for correction. [Re False Creek Reclamation Act, 22 D.L.R. 103, affirmed.]

Re False Creek Reclamation Act, 22 D.L.R. 117, 8 W.W.R. 1191, 31 W.L.R. 678, 113 L.T. 795.

(§ III-16)—EXPROPRIATION OF LAND—VALUATION OR ARBITRATION.

The mere permission to a majority of the valuers to examine witnesses does not necessarily make the submission one of arbitration rather than a valuation; each case must be determined according to its particular circumstances. [Re Carus-Wilson, 18 Q.B.D. 7, applied.]

Campbellford, Lake Ontario, etc., R. Co. v. Massie, 22 D.L.R. 673, 50 Can. S.C.R. 409.

(§ III-16)—IMPROPER VALUATION.

An award by valuers, defective because based on a valuation of several lots as an entirety instead of ascertaining the value on

each lot separately, does not warrant a dismissal of the action, but that the same or other valuers should be appointed to ascertain the value in a proper manner. [Cameron v. Cuddy, 13 D.L.R. 757, [1914] A.C. 651, followed; Campbell v. Irwin, 32 O.L.R. 48, reversed.]

Irwin v. Campbell, 23 D.L.R. 279, 51 Can. S.C.R. 358.

(§ III—16)—IMPROPER VALUATION AS TO DATES—EXPROPRIATION BY RAILWAY.

An award in expropriation proceedings under the Railway Act, Alta., 1907, ch. 8, is not invalidated because the arbitrators proceeded to fix the value as of the date of the arbitration instead of the date a few months earlier in the same year, when the appointment of the third arbitrator was made by a Judge's order, if the case developed no distinction as to value between those dates and both parties at the opening of the arbitration had acquiesced in the arbitrators' suggestion that the present value should be the basis of compensation.

Can. North. West. R. Co. v. Moore, 23 D.L.R. 646, 8 A.L.R. 379, 7 W.W.R. 1327, 30 W.L.R. 676.

(§ III—16)—ARBITRATOR'S REASONS—ERRORS IN LAW.

It is the duty of the Court to set aside an award where an error in law appears on the face thereof; and, where an arbitrator gives his reasons in a memorandum accompanying the award, error in law may be shewn by reference to those reasons. [Kent v. Elstob, 3 East 18, followed.]

Parsons v. Tp. of Eastnor, 23 D.L.R. 790, 34 O.L.R. 110, 8 O.W.N. 444.

(§ III—16)—NON-REPAIR OF DRAINS—DAMAGES—NOTICE.

A notice of claim for damages to lands commenced under the Municipal Drainage Act, R.S.O. 1914, ch. 198, against a municipality for its negligent upkeep and non-repair of drains, and also for the original malconstruction thereof, entitles the owner under sec. 90 of the Act to recover all damages accruing to him before the service of the notice, and an arbitrator's award which merely allows the damages sustained after the service of the notice is erroneous on its face and will be set aside.

Parsons v. Tp. of Eastnor, 23 D.L.R. 790, 34 O.L.R. 110, 8 O.W.N. 381, 444.

(§ III—16)—DISQUALIFICATION OF ARBITRATORS—WAIVER.

The remaining and taking part in arbitration proceedings does not constitute a waiver of an objection to the proceedings because of the disqualification of the arbitrators. [Hamlyn v. Betteley, 6 Q.B.D. 65, applied.]

Turnbull v. Rur. Mun. of Pipestone, 24 D.L.R. 281, 8 W.W.R. 982, 31 W.L.R. 595.

(§ III—16)—VALUATION OF FIXTURES BETWEEN LANDLORD AND TENANT—INTERVIEW BY ARBITRATOR.

An interview with the landlord while procuring invoices of stock to be used in making

the award, in the absence of the tenant or his counsel, does not constitute misconduct on the part of an arbitrator appointed in pursuance of the terms of a lease to determine the value of fixtures to be taken over by the landlord at the end of the term, where the invoices were so obtained at the suggestion of the tenant's counsel.

Fleming v. Duplessis, 25 D.L.R. 26, 9 W.W.R. 261, 32 W.L.R. 632.

(§ III—16)—ARBITRATOR VISITING PREMISES.

It is not a ground for setting aside an award of arbitrators if one of them did not visit the expropriated premises at the same time as the others since the majority of the arbitrators have a right to make the award, especially when the persons at the view did not raise any objection.

Girard v. Ha-Ha-Baie, 47 Que. S.C. 325.

(§ III—16)—STATUS OF OWNER ATTACKING AWARD.

A vendor of an immovable with the right of redemption, who allows the delay for redemption to expire without exercising his right, is no longer owner of this immovable; and if the latter is expropriated, he cannot after this delay bring an action to have the award set aside, although the proceedings in expropriation were commenced before the expiration of this delay when the vendor had some eventual rights in the land.

Girard v. Ha-Ha-Baie, 47 Que. S.C. 325.

(§ III—16)—EXPROPRIATION AWARD—OATH OF ARBITRATORS—WHO MAY ADMINISTER.

In an application under O. 14 of the Judicature Act for leave to enter final judgment in an action on an award for the value of land expropriated by a railway company pursuant to the Railway Act, C.S. 1903, ch. 91, it was objected that the award was bad, because the arbitrators had not been sworn by a Justice of the Peace for the county in which the lands lie as required by sec. 17 (7) of the Act. They had been sworn by a person, who was not in fact a justice, but was a commissioner for taking affidavits. At the commencement of the proceedings before the arbitrators it was stated in good faith that the arbitrators had been properly sworn before a justice for the county, and that statement was dictated by the counsel for the company to the stenographer, and, with the consent of the counsel for the other side, entered on the record:—Held, per White and Crocket, J.J., that the statutory provision requiring the arbitrators to be sworn might be waived, and the defendant company is estopped or precluded from objecting on that ground, by what took place before the arbitrators. Held, per Barry, J., that the statutory provision requiring the arbitrators to be sworn is a condition precedent to their jurisdiction, and want of jurisdiction cannot be waived by admission, nor can jurisdiction be conferred by estoppel. Held, per White, J., that an appeal having been taken from the award, and the parties on the hearing having agreed that if the Judge on appeal should come to the conclusion that the

award ought to be set aside he should make a new award on the evidence before him. An award made on this agreement is binding even though the award of the arbitrators is a nullity. Held, per Barry, J., that the original award, having been made by a tribunal without jurisdiction, there was no legal evidence upon which the Judge on appeal could base an award. Held, per White, J., that under sec. 8 (28) of C.S. 1903, ch. 1, it is sufficient if the oath required by the Railway Act is administered by any of the persons authorized by that sub-section. Held, per Barry, J., that as the Legislature had expressly or by clear inference provided that the oath should be administered by a designated person, no other person had authority to administer it. Held, per White, J., where the defence disclosed in answer to an application for leave to enter final judgment under O. 14, is a pure question of law, it is proper under the conditions existing in this province for a Judge at Chambers to decide the question and avoid the delay and expense of a trial.

Turney v. St. John & Quebec R. Co., 42 N.B.R. 557.

(§ III-16)—COMPENSATION FOR ELECTRIC WORKS EXPROPRIATED BY CITY CORPORATION—CLAIMS EXCLUDED BY STATUTE FROM CONSIDERATION OF ARBITRATORS—APPEAL FROM AWARD—STATEMENT AS TO CLAIMS CONSIDERED BY ARBITRATORS—RIGHT TO OBTAIN FOR INFORMATION OF COURT.

Re City of Peterborough and Peterborough Electric Light Co., 8 O.W.N. 564, 9 O.W.N. 119.

(§ III-17) — ADVANTAGES ATTACHING TO LAND—FORESHORE—RIGHT OF ACCESS TO SEA—SETTING ASIDE AWARD.

An arbitrator is not entitled to allow in his award in expropriation proceedings, for rights or interests which do not attach to the lands and which cannot be acquired as being advantages that attach to the lands; consequently if the expropriating municipality had obtained grants from the Crown to the foreshore so that a strip of foreshore under such grant intervened between the sea and the claimants' properties, compensation as for a right of access to the sea cannot be allowed such proprietors as if they had direct littoral or foreshore rights, nor can the arbitrator properly consider as a potential value attached to the property, the intention manifested by the municipality before conceding to a railway company rights along its foreshore, to make foreshore grants or leases to adjoining owners so as to enable them to enjoy the right of access to the sea. [*Re False Creek Arbitration*, 8 D.L.R. 422, 17 B.C.R. 282; *R. v. Bradburn*, 14 Can. Ex. 419; *Cedars Rapids v. Lacoste*, 16 D.L.R. 168, referred to.]

Re False Creek Reclamation Act, 22 D.L.R. 103, 7 W.W.R. 433, 30 W.L.R. 42. [Affirmed in 22 D.L.R. 117.]

(§ III-17)—DISCRETION AS TO REMITTING OR SETTING ASIDE—REVIEW.

The question as to whether an award should be set aside or remitted for reconsideration is one of discretion, and unless that discretion has been obviously misused it will not be interfered with on appeal. [*Re False Creek Reclamation Act*, 22 D.L.R. 103, affirmed.]

Re False Creek Reclamation Act, 22 D.L.R. 117, 8 W.W.R. 1191, 31 W.L.R. 678, 113 L.T. 795.

(§ III-17)—JURISDICTION TO REMIT AWARD.

There is no jurisdiction to remit an award in an arbitration held under the British Columbia Railway Act.

Re Canadian North. Pac. R. Co. and Finch, 20 B.C.R. 87.

(§ III-17) — EXPROPRIATION — REFERENCE BACK—DISQUALIFICATIONS OF ARBITRATORS.

In the case of expropriation of three immovables when the award of the majority of the arbitrators is maintained for one of them and as to the others it is ordered by the Privy Council that the case be returned to the arbitrators to be proceeded upon by hearing of witnesses and by giving a new award upon bases defined and indicated, the same arbitrators are not disqualified from acting, and the case should be sent back to them rather than to new arbitrators. Nevertheless, if since the making of the award the wife of one of the arbitrators has become a shareholder in usufruct and her children in ownership, in the expropriating company, and if this arbitrator is himself the attorney of his wife, and, moreover, the executor and trustee of the succession of his father-in-law, who was also a shareholder in the company, the arbitrator cannot continue to act as such in order to give the new award, and should be replaced.

Cedar Rapids Mfg. & Power Co. v. Lacoste, 24 Que. K.B. 207.

(§ III-17)—SETTING ASIDE AWARD—DISREGARD OF STATUTE AS TO OPINION EVIDENCE.

A disregard of the limitations of sec. 10 of the Evidence Act, Alta., limiting the number of witnesses to be called to give opinion evidence upon an arbitration subject to its provisions is a ground for setting aside the award and remitting the case to the arbitrators. [*Rice v. Sockett*, 8 D.L.R. 84, followed.]

Can. North. West. R. Co. v. Moore, 23 D.L.R. 646, 8 A.L.R. 379, 7 W.W.R. 1327, 30 W.L.R. 676.

(§ III-17)—CONCLUSIVENESS OF AWARD—PARTICULARS—WHEN SET ASIDE.

In an award, the arbitrators are not obliged to give particulars. To justify the setting aside of an award, the proof that the arbitrators went upon a wrong basis as to time with reference to which compensation should have been ascertained, must be clear.

Forget v. Lachine, J.-C. & M. R. Co., 24 Que. K.B. 174.

IV. Review of arbitration.

(§ IV—40)—APPEAL—MOTION TO QUASH—JURISDICTIONAL AMOUNT.

An appeal from the King's Bench, Quebec, to the Supreme Court of Canada, dismissing a motion by a railway company for appointment of arbitrators on an expropriation, on the ground of the insufficiency of the notice to treat under the Railway Act, Can., will be quashed when it neither appears on the record nor by affidavit, under sec. 49 of the Supreme Court Act, Can., that the matter in controversy amounts to the sum of value of \$2,000. [*Turgeon v. St. Charles*, 15 D.L.R. 298, 48 Can. S.C.R. 473, referred to.]

Can. North. Ont. R. Co. v. Smith, 22 D.L.R. 265, 50 Can. S.C.R. 476.

(§ IV—41)—INTEREST—STATUTORY RIGHT TO.

The right to interest upon the compensation awarded for the compulsory taking of lands under the Railway Act, Can., is a statutory right, and the arbitrators have no power to include such interest in their award. [*Re Ketcheson & C.N.O.R. Co.*, 13 D.L.R. 854, 29 O.L.R. 339, followed.]

Green v. Can. North. R. Co., 22 D.L.R. 15, 8 S.L.R. 53, 7 W.W.R. 1072, 30 W.L.R. 572, 19 Can. Ry. Cas. 139.

ARCHITECT.

Parties to building contracts, see Contracts.

Annotation.

Duty to employer: 14 D.L.R. 402.

(§ I—5)—CHANGE IN PLAN—WANT OF AUTHORITY.

An architect, who orders additions or changes in the plan and specification necessitating an increase in the price without authority from the owner, is personally liable to the contractor for the cost of such work.

Paupé v. Doucet, 48 Que. S.C. 184.

(§ I—5)—ARCHITECTS' ASSOCIATION—MEMBERS—OFFENCES.

The word "architect" cannot be used by a person to designate his profession unless he has been registered as a member of the Architects' Association of the Province of Quebec. One who advertises himself in various ways as an architect and who practises as such without this registration can be prosecuted only for a first offence although it may be continued.

Assoc. of Architects v. Paradis, 48 Que. S.C. 220.

ARREST.

I. FOR CRIME.

A. In general.

B. Without warrant.

II. IN CIVIL CASES.

Civil liability for, see False Imprisonment; Malicious Prosecution.

Of fugitive from justice, see Extradition.

Inquiry into sufficiency of warrant upon application for habeas corpus, see Habeas Corpus; Certiorari.

Resisting officer in making, see Obstructing Justice.

Annotation.

Arrest and detention of alien enemies: 23 D.L.R. 375, 383.

I. For crime.

A. IN GENERAL.

(§ I A—1)—EXEMPTION FROM ARREST—SOLDIERS IN ACTIVE SERVICE.

Ex parte Hughes, 24 D.L.R. 898, 24 Can. Cr. Cas. 222.

(§ I A—2)—WITNESSES ON APPLICATION FOR WARRANT.

Section 655 of the Cr. Code, as amended 1909, does not make it essential that witnesses should be produced on an application to a justice for a warrant of arrest, but requires that if any witnesses are produced their evidence must be given upon oath and taken down in writing by the justice. [To same effect see *Ex p. Archambault*, 16 Can. Cr. Cas. 433, *R. v. Mitchell*, 19 Can. Cr. Cas. 113.]

White v. Dunning, 21 D.L.R. 528, 8 S.L.R. 76, 24 Can. Cr. Cas. 85, 7 W.W.R. 1210, 30 W.L.R. 585.

B. WITHOUT WARRANT.

(§ I B—5)—MUNICIPALITY NOT LIABLE.

A city policeman appointed by a Justice of the Peace under the Constables Ordinance, Alta. (C.O. 1905), and paid by the city to carry on his duties as a police constable, especially within the boundaries of the city, but at the same time having jurisdiction throughout the province, is not a servant of the municipality in the ordinary sense, and the municipality is not liable under the doctrine of "respondeat superior" for an arrest wrongfully made by the constable without a warrant. [*McCleave v. Moncton*, 6 Can. Cr. Cas. 219, 32 Can. S.C.R. 106, referred to.]

Pon Yin v. City of Edmonton, 24 Can. Cr. Cas. 327, 31 W.L.R. 402, 8 W.W.R. 809.

(§ I B—7)—ASSAULT ON PEACE OFFICER.

A constable may at the time of an assault with bodily harm committed upon him arrest the person so assaulting him, and he may also arrest him in fresh pursuit while there is danger of the guilty person escaping; no warrant is in such case required, but he is not justified, after the lapse of several months, in arresting without a warrant in a case in which he is the injured party. [*Powell v. Williamson*, 1 U.C.Q.B. 154; *Ex parte McCleave*, 6 Can. Cr. Cas. 15, 3 O.L.R. 438, and *Reg. v. Heffernan*, 13 Ont. R. 616, referred to.]

Rex v. Belyea, 24 Can. Cr. Cas. 395, 43 N.B.R. 375.

(§ I B-7)—OFFENCE SUMMARILY PUNISHABLE—VAGRANCY.

Vagrancy under Cr. Code, secs. 238 and 239, being the subject of summary conviction proceedings and not of indictment, Code sec. 652 does not apply to justify an arrest on suspicion by a peace officer without warrant where the peace officer did not find the accused committing the particular act relied upon as constituting statutory vagrancy (Cr. Code, sec. 648).

Rex v. Lachance, 24 Can. Cr. Cas. 421.

(§ I B-8)—WHEN JUSTIFIABLE—PROBABLE CAUSE.

A peace officer is justified under Cr. Code, sec. 30, in arresting without warrant a person who, on reasonable and probable grounds, he believes has committed an indictable offence for which the law provides that the offender may be arrested without warrant, but in acting under sec. 30, it is essential that the officer should stand indifferent so that he may act without bias or partiality in deciding whether or not there are reasonable and probable grounds for the arrest; consequently sec. 30 cannot apply where the officer is himself the person specially aggrieved by the offence.

Rex v. Belyea, 24 Can. Cr. Cas. 395, 43 N.B.R. 375.

II. In civil cases.

(§ II-10)—FRAUDULENT DEBTORS ARREST ACT—PROOF OF DEBT—INTENT TO DEFRAUD—INTENT TO LEAVE WITHOUT PROVIDING FOR DEBTS.

Simpson v. Genser, 25 D.L.R. 847, 34 O.L.R. 381, 9 O.W.N. 21.

ASSAULT AND BATTERY.

I. IN GENERAL.

II. JUSTIFICATION; DEFENCES.

I. In general.

(See previous Annual Digests.)

II. Justification; defences.

(§ II-7)—OPPROBRIOUS WORDS.

A provocation caused by being called an opprobrious and disgraceful name is no legal justification for an assault and battery. [Short v. Lewis, 3 U.C.Q.B. (O.S.), 385; Percy v. Glasco, 22 U.C.C.P. 521, 526; Murphy v. Dundas, 38 N.B.R. 563; Slater v. Watts, 16 B.C.R. 36, followed.]

Evans v. Bradburn, 25 D.L.R. 611, 9 W.W.R. 281, 32 W.L.R. 585.

(§ II-15)—SUMMARY CONVICTION AS BAR TO CIVIL ACTION.

A charge of assault occasioning actual bodily harm under Cr. Code, sec. 295, is one which two justices would have power to try only under the Summary Trials clauses, Pt. XVI of the Cr. Code; and if the information be not amended so as to charge common assault and they proceed to make a summary conviction for common assault only, the payment of the fine and costs by the

accused will not bar a civil action for damages for the assault under Cr. Code, sec. 734, it not being competent for the justices to treat the case as triable under the Summary Convictions clauses (Pt. XV of the Code) so as to affect the prosecutor's civil rights without his consent. [Miller v. Lea, 2 Can. Cr. Cas. 282, 25 A.R. 428, applied; Nevills v. Ballard, 1 Can. Cr. Cas. 434, 28 O.R. 588; Clarke v. Rutherford, 5 Can. Cr. Cas. 13, 2 O.L.R. 206; Larin v. Boyd, 11 Can. Cr. Cas. 74, referred to.]

Twiss v. Curry, 24 Can. Cr. Cas. 438, 8 O.W.N. 468.

ASSESSMENT.

On unpaid subscription to stock, see Corporations and Companies.

For insurance, see Insurance, III.

Of taxes, see Taxes.

For schools, see Schools.

ASSIGNMENT.

I. WHAT ASSIGNABLE; VALIDITY.

II. EQUITABLE ASSIGNMENT; ORDERS.

III. RIGHTS AND LIABILITIES OF PARTIES.

For creditors, see Assignment for Creditors.

Of purchaser's interest in instalment contract for lands, see Vendor and Purchaser.

Assignment of interest in land under land titles statutes, see Land Titles.

Of negotiable paper, see Bills and Notes; Cheques.

Of lease, see Landlord and Tenant.

Effect on right of action, see Parties.

Of mortgage, see Mortgage.

Annotation.

Equitable assignments of choses in action: 10 D.L.R. 277.

I. What assignable; validity.

(§ I-2)—INSURANCE CLAIM.

The claim of the person whose premises are damaged by fire against another for negligence in causing the fire is assignable to a fire insurance company which, in consequence, is called upon to pay a loss under its policy to the owner of the premises. [King v. Victoria Insurance Co., [1896] A.C. 250, followed; Dell v. Saunders, 17 D.L.R. 279, 19 B.C.R. 500, referred to.]

Union Ass. Co. v. B.C. Electric R. Co., 21 D.L.R. 62, 21 B.C.R. 71, 8 W.W.R. 327, 30 W.L.R. 717.

(§ I-12)—TRANSFER OF LAND AGREEMENT.

An agreement for sale is transferable in its nature providing there is no express stipulation making it exclusively in favour of the person to whom it is addressed. The transfer of such an agreement is valid if made within the delays fixed for its acceptance.

Langlois v. Charpentier, 47 Que. S.C. 97.

II. Equitable assignment; orders.

(§ II—20)—EQUITABLE OR LEGAL CHARGE—DISTINCTION.

Where the holder of the fund intervenes and assumes a responsibility in respect of an order drawn on him not amounting to an equitable assignment, the question against him is one of a charge either equitable or legal and not one of assignment; the question of an equitable assignment must depend solely upon what took place between the assignee and the assignor.

Ritchie v. Jeffrey, 21 D.L.R. 851, 8 A.L.R. 215, 8 W.W.R. 729, 31 W.L.R. 221.

[Affirmed by Canada Supreme Court, Nov. 29, 1915, 52 Can. S.C.R. 243.]

(§ II—20)—CHOSE IN ACTION—VERBAL ASSIGNMENT.

An assignment of a chose in action may be verbal where a writing is not required by law; no particular form of words is necessary so long as they clearly shew an intention that the assignee is to have the benefit of the chose in action.

Ritchie v. Jeffrey, 21 D.L.R. 851, 8 A.L.R. 215, 8 W.W.R. 729, 31 W.L.R. 221.

[Affirmed by Canada Supreme Court, Nov. 29, 1915.]

(§ II—20)—INFERRED FROM CONDUCT—WHERE BILL OF EXCHANGE OR ORDER NOT SUFFICIENT.

An equitable assignment may be inferred from conduct or a course of dealing, and this although a bill of exchange has been drawn or a mere order has been given which alone would not constitute an assignment; and where the written order does not specify the debt owing by the addressee or the fund intended to be assigned, the fact of an equitable assignment may be shewn as supplementary to the writing. [*Galt v. Smith*, 1 Terr. L.R. 129; *Percival v. Dunn*, 29 Ch.D. 128, referred to.]

Ritchie v. Jeffrey, 21 D.L.R. 851, 8 A.L.R. 215, 8 W.W.R. 729, 31 W.L.R. 221.

[Affirmed by Canada Supreme Court, Nov. 29, 1915, 52 Can. S.C.R. 243.]

(§ II—20)—GARNISHEE AND ASSIGNEE—PRIORITY.

To establish an equitable assignment of a chose in action in priority to garnishment proceedings, it must appear that the alleged equitable assignee had an interest in the fund and not merely some right of action against the creditor whose debt is attached.

Brodeur v. Elliott, 22 D.L.R. 122.

III. Rights and liabilities of parties.

(§ III—25)—ASSIGNMENT OF BUILDING CONTRACT TO BONDING COMPANY—LIABILITY OF ASSIGNEE TO SUB-CONTRACTOR.

A guaranty company, which gave a bond of indemnity to the owner of a building about to be constructed, for the due completion of said building by a construction company under contract, and to whom the construction company assigned the contract to take effect only on the default of the construction

company, agreed, when the default had taken place, to allow the owner to complete the building. The construction company had sub-contracted to the plaintiff for certain work on the building, part of which was done before and part after the construction company's default. In an action for the value of the work against the guaranty company as assignee of the contract:—Held, on appeal, that no liability could be attached to the guaranty company for the sub-contractor's debt. Decision of Grant, Co.J., reversed.

Ramsay v. Westwood & U.S. Fidelity & Guaranty Co., 20 B.C.R. 85.

(§ III—27)—RIGHTS OF ASSIGNEE OF WAGES—RECOVERY.

Dochendorff v. Mester, 25 D.L.R. 818, 9 W.W.R. 526, 32 W.L.R. 911.

(§ III—29)—ASSIGNEE OF LEASE—RIGHT TO SUE IN OWN NAME—"ENTIRE BENEFICIAL INTEREST"—PROOF OF.

Where the assignee of a lease proves an assignment absolute in form it is sufficient evidence of his entire beneficial interest to enable him to sue in his own name under ch. 146, R.S.S. 1909, unless it is proved that notwithstanding the assignment he did not have the entire beneficial interest in the claim sought to be recovered. [*John Deere Plow Co. v. Tweedy*, 15 D.L.R. 518, distinguished.]

West v. Shun, 24 D.L.R. 813, 8 S.L.R. 243, 9 W.W.R. 644, 32 W.L.R. 961.

(§ III—30)—SALE OF DEBT—NOTICE.

The transferee who sues to recover the debt transferred without having given notice of the sale to the debtor can only obtain judgment for the debt without costs.

St. Maurice Sand Co. v. Brault, 48 Que. S.C. 386.

(§ III—32)—ASSIGNEE OF AGREEMENT FOR SALE OF LAND—EQUITIES BETWEEN VENDOR AND PURCHASER.

The assignee of an agreement for sale, even in the event of the payments under the agreement not having matured at the time of the assignment, is only entitled to recover the moneys due and enforce the agreement subject to any equities existing between the purchaser and vendor.

British Pac. Trust Co. v. Baillie, 20 B.C.R. 199.

ASSIGNMENTS FOR CREDITORS.

I. WHAT CONSTITUTES AN ASSIGNMENT.

II. CONSTRUCTION AND EFFECT OF ASSIGNMENT.

III. ASSIGNEE OR TRUSTEE.

- A. In general.
- B. Rights and powers.
- C. Liabilities.

IV. RIGHTS AND LIABILITIES OF ASSIGNEE'S ATTORNEY.

V. VALIDITY; TAKING EFFECT.

VI. PROPERTY INCLUDED.

VII. PREFERENCES BY INSOLVENT.

- A. In general.
- B. Validity of.

VIII. RIGHTS, DUTIES AND LIABILITIES OF CREDITORS; PRIORITY AND RELEASE OF CLAIMS.

- A. In general.
- B. Release of claims.

IX. LIABILITY OF ASSIGNOR.

Preferences to creditors generally, see *Fraudulent Conveyances*, III.

As to insolvency generally, see *Insolvency*.
Insolvency and wind-up of companies, see *Corporations and Companies*; *Banks*.

Annotation.

Rights and powers of assignee: 14 D.L.R. 503.

I. What constitutes an assignment.

(\$ I-1)—WHO MAY MAKE—CORPORATION.

An incorporated company has power to make an assignment for the benefit of creditors, and is therefore subject to the provisions of the Assignment Act. [*Hovey v. Whiting*, 14 Can. S.C.R. 515, followed.]

Re Olympia Co., 25 D.L.R. 620, 9 W.W.R. 875.

(\$ I-1)—REVOCABILITY.

Where an assignment for the benefit of creditors has been duly made by the assignors and accepted by the assignee, such assignment is irrevocable and cannot be disclaimed. [*Nelles v. Maltby*, 5 O.R. 263; *Gardner v. Kleopfer*, 7 O.R. 603; *Brown v. Grove*, 18 O.R. 311; *Rennie v. Block*, 26 Can. S.C.R. 356, referred to.]

Ahlberg v. Blair, 8 W.W.R. 59.

II. Construction and effect of assignment.

(See previous Annual Digests.)

III. Assignee or trustee.

B. RIGHTS AND POWERS.

(\$ III B 2-20)—BURDENSOME PROPERTY—LEASE.

An official assignee under the Assignments Act, 1907, Alta., ch. 6, is not bound to accept a term of years to which the assignor was entitled under a lease at the date of the assignment for benefit of creditors, if it may be a charge instead of a benefit to the estate; the operation of the assignment in vesting the term in the assignee is suspended quâ the lease until he does some act signifying acceptance.

North-West Theatre v. MacKinnon, 24 D.L.R. 107, 8 A.L.R. 226, 31 W.L.R. 226, 8 W.W.R. 691.

(\$ III B 3-25)—ACTIONS BY.

An official assignee under the Bulk Sales Act, Sask., is not entitled to sue for money or property until it has actually been transferred or assigned to him.

National Trust Co. v. Nadon, 24 D.L.R. 742, 8 S.L.R. 41, 7 W.W.R. 1067, 30 W.L.R. 588.

(\$ III B 3-25)—ACTIONS BY—PRIVITY OF CONTRACT.

In an action by the approved assignee for creditors under the Assignments Act, Sask., to recover on the debtor's contract with a third party where there has been no assignment to raise a privity of contract with the third party in favour of the plaintiff, leave may be given to add the debtor as a party to obviate the objection of want of privity.

National Trust Co. v. Nadon, 24 D.L.R. 742, 8 S.L.R. 41, 7 W.W.R. 1067, 30 W.L.R. 588.

(\$ III B 3-25)—ACTIONS BY—REPLEVIN—MODE OF PROCEEDING.

An assignee for the benefit of creditors need not rely upon the special statutory remedies given him under secs. 48 and 50 of the Creditors Trust Deeds Act, R.S.B.C. 1911, ch. 13, to enable him to proceed in replevin to recover the possession of goods assigned to him.

Roy v. Fortin, 25 D.L.R. 18, 9 W.W.R. 407, 32 W.L.R. 790.

(\$ III B 3-25)—ACCOUNTING—ASSIGNEE DEFENDING ACTION—COSTS.

Where a claim filed against the partnership estate is for money alleged to have been received by one of the partners in the course of the partnership business, but, in respect of which he had defaulted in accounting, the assignee for creditors of the partnership will, if justified in defending the action, be entitled to be paid out of the assets both the claimant's costs of a successful action to establish the claim and his own costs of defence against solicitor and client.

Sask. Elevator Co. v. Can. Credit Men's Assoc., 21 D.L.R. 658.

C. LIABILITIES.

(\$ III C-30)—BREACH OF TRUST—FAILURE TO MAKE PAYMENTS ON SPECULATIVE CLAIMS—RIGHTS OF ASSIGNOR.

Where a debtor, not in fact insolvent and having a large surplus of assets, makes an assignment for the benefit of creditors, no breach of trust arises on the part of the assignee for his failure to make payments, in order to preserve the interests of creditors, upon speculative coal claims upon which large arrears were due the government, though such appears to be detrimental to the interests of the assignor.

King v. Doll, 25 D.L.R. 557, 9 W.W.R. 151, 32 W.L.R. 411, affirming 22 D.L.R. 524.

(\$ III C-30)—ASSIGNEE ENTERING INTO POSSESSION WITHOUT DISCLAIMING LEASE—PERSONAL LIABILITY.

Where an assignee of an insolvent acts under his deed of assignment and enters into possession of premises held by the insolvent under a lease, without clearly disclaiming the lease, he thereby accepts the lease, and becomes personally bound by its covenants. [*White v. Hunt*, L.R. 6 Ex. 32; *Hanson v. Stevenson and Milns*, 106, E.R. 113; *Ren-*

dall v. Andrews, 61 L.J.Q.B.D. 630, referred to.]

North-West Theatre v. MacKinnon, 30 W.L.R. 897, 8 W.W.R. 237.

IV. Rights and liabilities of assignee's attorney.

(See previous Annual Digests.)

V. Validity; taking effect.

(§ V—42)—TAKING POSSESSION OF GOODS—EFFECT ON LEASE.

The fact that the official assignee for benefit of creditors put a man in possession of the stock in trade on premises leased to the assignor is not necessarily an acceptance of the lease by the assignee, and will prima facie be held to be an entry for the purpose of taking possession of the goods rather than of the land.

North-West Theatre v. MacKinnon, 24 D.L.R. 107, 8 A.L.R. 226, 31 W.L.R. 226, 8 W.W.R. 691.

VI. Property included.

(§ VI—50) — GOVERNMENT COAL LANDS — SPECULATIVE CLAIMS.

Where the creditors, the assignee and the debtor had acted as if certain speculative dealings of the debtor through himself and his nominees to acquire government coal lands were not within the debtor's assignment for creditors, made specially because of a separate mercantile business, although the assignment in form included all the debtor's real estate, the acquiescence of the debtor will bar his subsequent claim that the estate through the assignee should have protected the coal lands by making payments out of the general estate necessary to prevent the forfeiture of his interests.

King v. Doll, 22 D.L.R. 524.

[Affirmed in 25 D.L.R. 557.]

(§ VI A—50)—JUDICIAL ABANDONMENT OF PROPERTY—SCHEDULE—CONTESTATION.

In a judicial abandonment of property where the insolvent declares in his statement that he has no property movable or immovable, and that he is not aware of any creditors, if it is established that the bankrupt, registered as doing business under a firm name, is only a prête-nom in good faith, the contestation of this statement and demand for his imprisonment will be dismissed.

Lauzon v. Lachapelle, 47 Que. S.C. 352.

VII. Preferences by insolvent.

A. IN GENERAL.

(§ VII A—55)—ASSIGNMENTS AND PREFERENCES—CONVEYANCE OF LAND IN TRUST FOR ERECTION OF BUILDINGS AND PAYMENT OF CREDITORS—EXPENDITURE BY TRUSTEE IN EXCESS OF SUMS RECEIVED FROM PROPERTY—MORTGAGE BY TRUSTEE TO SECURE PERSONAL CREDITOR—APPOINTMENT OF NEW TRUSTEE—ACTION AGAINST

FOR FORECLOSURE—TRUST NOT WITHIN ASSIGNMENTS AND PREFERENCES ACT—JUDGMENT—IMMEDIATE FORECLOSURE—COSTS.

Foster v. Trusts and Guarantee Co., 8 O.W.N. 531.

(§ VII A—55)—ASSIGNMENTS AND PREFERENCES—SECURED CREDITOR VALUING SECURITY—RIGHT TO RE-VALUE—ASSIGNMENTS AND PREFERENCES ACT, R.S.O. 1914, ch. 134—COSTS.

Re Payne and Union Bank of Canada, 8 O.W.N. 614.

B. VALIDITY OF.

(§ VII B—61)—ASSIGNMENTS AND PREFERENCES—CLAIM OF ASSIGNEE TO MORTGAGE UPON LAND OF INSOLVENT—SECURITY FOR MAINTENANCE OF IMBECILE—ORIGINATING NOTICE—RULE 600—SCOPE OF.

Re Batttrim, 7 O.W.N. 778.

VIII. Rights, duties, and liabilities of creditors; priority and release of claims.

A. IN GENERAL.

(§ VIII A—65)—CONFLICTING CLAIMS—DIFFERENT STATUTES.

When special provisions are enacted for dealing with particular cases, these provisions are to govern, even though there may be some general provisions of another enactment wide enough to cover some of them; hence, an assignee for the benefit of creditors, under an assignment within the provisions of the Assignments and Preferences Act, R.S.O. 1914, ch. 134, is not entitled, upon a summary application to the Court, under sec. 66 of the Trustee Act, R.S.O. 1914, ch. 121, or under r. 600, to have conflicting claims of right to rank upon the estate determined.

Re Fearnley's Assignment, 22 D.L.R. 604, 33 O.L.R. 492, 8 O.W.N. 223.

(§ VIII A—65)—PREFERRED CLAIMS—RENT—STIPULATION IN LEASE—VALIDITY.

Harwood v. Assiniboia Trust Co., 25 D.L.R. 830, 8 S.L.R. 162, 8 W.W.R. 565.

(§ VIII A—65)—PROCEDURE TO DETERMINE VALIDITY OF DISPUTED CLAIM—IRREGULARITY—WAIVER.

Where an assignment has been made for the general benefit of creditors under the Assignments Act (Saskatchewan), any action to determine the validity of a claim disputed by the assignee must be commenced and carried on according to the procedure laid down in sec. 31 of that Act and no other. The commencement of an action by writ of summons to determine the validity of a claim disputed by an assignee for the benefit of creditors is improper and the procedure is wholly void and not merely irregular, and the defendant, by appearing to the writ of summons, does not waive his rights to object to such procedure.

West v. Sask. General Trust Corp., 32 W.L.R. 189, 8 W.W.R. 232.

(§ VIII A—66)—RIGHT OF PREFERRED CREDITOR TO RANK—NOTICE.

The statutory notice given by an assignee for creditors under sec. 7 of the Assignments and Preferences Act, R.S.O. 1914, ch. 134, contesting the preference claimed by a creditor for a part of his claim, does not create a forfeiture of the security or of the creditor's right to rank upon the estate in the event of non-compliance with the notice of contestation.

Cole v. Cole, 21 D.L.R. 576, 8 O.W.N. 450.

(§ VIII A—69) — PRIORITIES — BUSINESS CARRIED ON BY CREDITORS — DEBTS INCURRED MEANWHILE.

The business of an insolvent carried on by the creditors in pursuance of an agreement with the debtor for the purpose of liquidating their claims does not necessarily constitute the creditors a partnership of the business, so as to render them personally liable for goods furnished the estate during the continuance of the business by the creditors; nor will the claims of those who become creditors subsequently to such arrangement be accorded a priority over the claims of the old creditors. [Cox v. Hickman, 8 H.L.C. 286, followed.]

Re Wilson Assignment, 25 D.L.R. 417, 8 S.L.R. 401, 31 W.L.R. 798.

[See also 25 D.L.R. 758.]

(§ VIII A—71)—PRIORITIES—RIGHTS UNDER UNREGISTERED MORTGAGE.

Whether an assignment is general or special, the assignee for the benefit of creditors takes no greater title to land included in the assignment than the assignor can give, and a mortgagee claiming under an unregistered mortgage made in good faith prior to the assignment will be accorded a priority over the assignee for creditors. [Thibaudeau v. Paul, 26 O.R. 385; Steele v. Murphy, 3 Moore P.C. 445, followed.]

Re Wilson Estate, 24 D.L.R. 792, 33 O.L.R. 500, 8 O.W.N. 229.

IX. Liability of assignor.

(§ IX—80)—CONTINUED LIABILITY OF ASSIGNOR.

An assignment for the benefit of creditors does not discharge the insolvent from the obligation to pay his debts in full, and he will remain debtor for the surplus over and above what is realized from the assigned property.

St. Charles v. Monette, 47 Que. S.C. 164.

ASSOCIATIONS.

I. IN GENERAL.

II. MEMBERS.

A. In general.

B. Right to membership; expulsion.

Benevolent societies, see Benevolent Societies; Charities.

Validity of subscription for Y.M.C.A., see Contracts I C.

Liability as partners, see Partnership.
Religious societies, see Religious Societies.

Corporations, see Corporations and Companies.

I. In general.

(§ I—2)—FRATERNAL SOCIETIES—PROPERTY RIGHTS—REVIEW BY COURTS.

Ordinarily courts of justice will not interfere with the actions of fraternal societies, unless rights of property are involved.

Lindsay v. Empey, 23 D.L.R. 877, 32 W.L.R. 256, 8 W.W.R. 32.

II. Members.

(§ II A—5) — UNINCORPORATED SOCIETY — ELECTION OF DIRECTORS AND OFFICERS — PERSONS ENTITLED TO VOTE — DETERMINATION BY RETURNING OFFICER — ABSENCE OF FRAUD — RULES OF SOCIETY — IRREGULARITY — BREACH OF TRUST — COSTS.

Wirta v. Vick, 7 O.W.N. 758.

(§ II A—6)—FRATERNAL SOCIETIES—RIGHTS OF MINORITY—PROPERTY RIGHTS.

The power of assembly guaranteed by the constitution of the supreme body of a fraternal society to the minority members of a subordinate constituency in the event of a withdrawal of the majority, and a by-law specifically providing that the property and effects thereof are to be held by the principals to the use and benefit of the constituency, the action of the seceding majority alien to such purposes is ultra vires, and the Courts will compel the return of the property to the remaining minority. [Free Church of Scotland v. Overtoun, [1904] A.C. 515; Craigdallie v. Aikman, 1 Dow. 1, applied.]

Lindsay v. Empey, 23 D.L.R. 877, 8 W.W.R. 32, 32 W.L.R. 256.

(§ II A—7)—POWERS OF MEMBERS—LIABILITY FOR DEBTS.

The association of a number of persons for purposes of a public demonstration without capital or revenue and without any expectation of gain or profit for any of them is not such an association as is defined by art. 1830, C.C. Hence, there cannot be applied to such an assemblage the provisions of art. 1851, C.C., which declares that in the absence of special provisions as to the mode in which the affairs of the association are to be administered, each of the members is considered to have the power of administration for the others and each may make the others responsible. The members of such an association cannot be held responsible for debts contracted by one of them without the knowledge and authorization, express or implied, of the others, unless there exist reasonable grounds for believing that such authorization has been given according to the rules governing a mandate. The fact that a person is president of such an association does not empower

him to contract in the name of the body and make the members liable.

Aaron v. Trudel, 47 Que. S.C. 156.

ATTACHMENT.

I. WHEN LIES.

- A. In general.
- B. On what claims.
- C. By or against non-residents or foreign corporations.
- D. For fraud.

II. INTEREST ACQUIRED; LIEN; PRIORITY.

- A. In general.
- B. Lien; priority.

III. PROCEDURE.

- A. In general; affidavits; petition, etc.
- B. Bonds, liability on.
- C. Dissolution; dismissal; setting aside.

As to garnishment, see Garnishment.

Arrest in civil cases, see Arrest.

Sale under, see Judicial Sale.

As to levy under, see Levy and Seizure; Execution.

Attachment for contempt, see Contempt.

I. When lies.

A. IN GENERAL.

(§ I A—1)—ALL OTHER MEANS EXHAUSTED.

An application for an attachment should not be made until and unless all other means, provided by law for the recovery of the money, have been exhausted.

The King v. Borden, Ex parte Kinnie, 24 D.L.R. 197, 43 N.B.R. 299.

(§ I A—5)—CONSERVATORY ATTACHMENT—RIGHT OF HEIR TO REMEDY—TORTIOUS WITH-HOLDING OF MOVEABLES FROM ESTATE—INVENTORY AND SEAL.

Wollenberg v. Barasch, 24 D.L.R. 907, 24 Que. K.B. 249.

II. Interest acquired; lien; priority.

B. LIEN; PRIORITY.

(§ II B—33)—PRIORITIES BETWEEN ATTACHMENT LIENS—SUBSEQUENT EXECUTIONS.

Where there are no other executions in the sheriff's hands at the time, the service of a summons for the attachment of a debt, under sec. 31 of the Creditors Relief Act (B.C.), while not a transfer of the debt itself, creates a charge thereon in favour of the attaching creditor entitling him to be paid out of the funds the amount of his claim, and is not taken away by the subsequent receipts of other writs of execution by the sheriff. [Re Combined Weighing, etc., 43 Ch.D. 99; Norton v. Yates, [1906] 1 K.B. 112; Cairney v. Back, [1906] 2 K.B. 746, applied; Ward v. Wilson, 13 B.C.R. 273, disapproved.]

Anderson v. Dawber, 25 D.L.R. 644, 9 W.W.R. 511, 32 W.L.R. 841.

III. Procedure.

A. IN GENERAL; AFFIDAVITS; PETITION, ETC.

(§ III A—45)—NON-PAYMENT OF COSTS—SERVICE OF RULE—ENDORSEMENTS.

In an application for an attachment for

non-payment of costs, it is unnecessary that the rule served should be endorsed as required by O. 41, r. 5. [In re Deakin, Ex parte Cathcart, [1900] 2 Q.B. 478, applied.]

The King v. Borden, Ex parte Kinnie, 24 D.L.R. 197, 43 N.B.R. 299.

(§ III A—45)—NON-PAYMENT OF COSTS—AFFIDAVIT—REQUISITES OF.

On an application for an attachment for non-payment of costs, an affidavit may be read if it is entitled in the Court and cause, although it is not entitled the same as the rule under which it is made.

The King v. Borden, Ex parte Kinnie, 24 D.L.R. 197, 43 N.B.R. 299.

(§ III A—45)—AFFIDAVIT FOR CAPIAS—PROMISSORY NOTES—PARTICULARS OF CAUSE OF ACTION.

In an affidavit for capias issued for an indebtedness on promissory notes, it is sufficient to enumerate the details appearing on the face of the notes, without alleging more specially the cause of action; the consideration of the notes, the place where the debt was contracted, and that it was contracted within the limits of the province of Quebec and Ontario.

Schavol v. Silverman, 47 Que. S.C. 204.

ATTESTATION.

Of deed, see Deeds.

Of wills, see Wills, I.

ATTORNEYS.

See Solicitors; Barristers.

ATTORNEY-GENERAL.

As necessary party to proceeding questioning exercise of public right, see Parties.

AUCTION.

(§ I—5)—SALE OF FARMING EFFECTS—TERMS—PROMISSORY NOTE.

On an auction sale of farming effects on advertised terms of six months' credit, three months without interest, on approved joint note, a buyer, who obtains delivery on a promise to pay cash in a few days and refuses to give an approved note on the advertised terms, may be sued forthwith on defaulting in his promise, and cannot set up in answer that the three months' credit term had not expired.

Crossman v. Mosely, 22 D.L.R. 713, 48 N.S.R. 227.

AUTOMOBILES.

I. IN GENERAL.

II. PUBLIC REGULATION AND CONTROL; LICENSE.

III. INDIVIDUAL RIGHTS AND LIABILITIES.

- A. In general.
- B. Duty of operator; negligence.
- C. Responsibility of owner when car operated by another.
- D. Duty and liability to operator or person using.

IV. AUTOMOBILES FOR HIRE.

V. GARAGE.

- A. In general.
- B. Right of proprietor to lien.
- C. Licensing of garage.
- D. Duty to customer.

Collision on highways, see Highways;
Negligence; Street Railways.

I. In general.

[See previous Annual Digests.]

II. Public regulation and control; license.

 (§ II—110)—REGULATION OF USE FOR HIRE—
EFFECT OF BY-LAW ON ISSUED LICENSES.

A by-law of city police commissioners, placing further restrictions on the operation of automobiles for hire within the city, will not be effective to control an unqualified license already held by the accused which remained unrevoked.

Rex v. Aitcheson, 25 Can. Cr. Cas. 36,
9 O.W.N. 65.

III. Individual rights and liabilities.

A. IN GENERAL.

 (§ III A—160)—NEGLIGENCE—VIOLATION OF
MUNICIPAL BY-LAW AS TO RULES OF ROAD
—COMMON FAULT.

The owner of an automobile who does not remain at rest behind a stationary car at a distance of not less than 10 feet in conformity with the by-law No. 450 of the City of Montreal, and who injures a passenger descending from a car, is liable for the consequences of this accident. On the other hand, a passenger who descends from a car without considering whether or not the road is clear and he can cross the street without danger is guilty of a serious fault. In the above case the accident is due to common fault, namely, that of the owner of the automobile for one-third and that of the passenger for two-thirds.

Evans v. Lalonde, 47 Que. S.C. 374.

B. DUTY OF OPERATOR; NEGLIGENCE.

 (§ III B—253) — INJURY TO PEDESTRIAN
WHILE WAITING FOR CAR—FAILURE TO
LOOK—CONTRIBUTORY NEGLIGENCE.

A pedestrian crossing a wide street, who stops in the roadway at a safe place beside the street car track for a street car to pass and then walks back in the direction from which he came without looking for approaching vehicles, is himself guilty of negligence disentitling him to recover where, in retracing his steps, he walked in front of an automobile proceeding at a moderate rate of speed and was knocked down and injured before the motorist could avoid him.

Todesco v. Maas, 23 D.L.R. 417, 8 A.L.R. 187, 7 W.W.R. 1373.

C. RESPONSIBILITY OF OWNER WHEN CAR OPER-
ATED BY ANOTHER. (§ III C—300)—LARCENOUS TAKING—WHAT
IS.

The taking by a servant of a garage keeper without the owner's consent of a car stored in the garage for repairs, the servant mistaking it for a demonstration car, raises no such *animus furandi* as to render such taking an act of larceny which will relieve the owner from the liability imposed by sec. 19 of the Motor Vehicles Act, R.S.O. 1914, ch. 207.

Downs v. Fisher, 23 D.L.R. 726, 33 O.L.R. 504, 8 O.W.N. 257.

 (§ III C—310)—CAR DRIVEN BY SERVANT OF
GARAGE KEEPER.

The taking of an automobile which has been placed in a garage for repairs and which is driven by a servant of the garage keeper without the owner's consent will render the owner liable in damages for injuries thereby occasioned, in virtue of sec. 19 of the Motor Vehicles Act, R.S.O. 1914, ch. 207.

Downs v. Fisher, 23 D.L.R. 726, 33 O.L.R. 504, 8 O.W.N. 257.

IV. Automobiles for hire.

[See previous Annual Digests.]

V. Garage.

D. DUTY TO CUSTOMER.

 (§ V D—480) — AUTOMOBILE DAMAGED BY
FIRE—LIABILITY OF GARAGE OWNER.

The owner of a garage is a paid depository, and as such is responsible for damage by fire to an automobile entrusted to his care, unless he can prove that the accident did not result from any fault on his part.

Brunet v. Painchaud, 48 Que. S.C. 59.

AUTREFOIS ACQUIT OR CONVICT.

See Criminal Law.

AWARD.

By arbitrators, see Arbitration, II.

As compensation in eminent domain, see Eminent Domain; Damages.

BAGGAGE.

In General, see Carriers.

Innkeepers' liability for, see Innkeepers.

BAIL AND RECOGNIZANCE.

On appeal generally, see Appeal.

 (§ I—2)—FAILURE TO FILE RECOGNIZANCE—
DISMISSAL OF APPEAL.

Where no attempt is made by an appellant to secure the return of a recognizance into Court by magistrates within the statutory ten days, a return which can be compelled by mandamus, the failure to file such recognizance should entail the dismissal of the appeal. [Wills v. McSherry, [1913] 1 K.B. 20, distinguished, and R. v. McKay, 21

Can. Cr. Cas. 211, disapproved. *Re McNeill and Saskatchewan Hotel Co.*, 17 W.L.R. 7, followed.]

Rex v. Hewa, 9 W.W.R. 689, 33 W.L.R. 29.

(§ I—4)—**COMMITTAL ON CHARGE OF MURDER.**

The general rule is that a person committed for trial on a charge of murder will not be granted bail. [*R. v. Rae*, 23 Can. Cr. Cas. 266, 32 O.L.R. 89, applied.]

Rex v. Gentile, 24 Can. Cr. Cas. 342, 8 W.W.R. 1081, 32 W.L.R. 217.

(§ I—10)—**ESTREAT—REQUÊTE CIVILE TO SET ASIDE FORFEITURE—CERTIORARI.**

The surety of an accused person may petition by requête civile in the province of Quebec to have set aside a judgment given upon an order for forfeiture of the recognizance, and his petition can and should be accompanied by a writ of certiorari if it is desired to shew that the order itself was irregular.

Rex v. Davis, 24 Can. Cr. Cas. 382, 16 Que. P.R. 297.

BAILIFFS.

See also Sheriff.

As to qualifications, duties and liabilities, see Officers.

BAILMENT.

I. IN GENERAL.

II. RIGHTS OF BAILEE.

III. DUTY AND LIABILITY OF BAILEE.

By pledge, collateral security, see Pledge.

Annotation.

Recovery by bailee against wrongdoer for loss of thing bailed: 1 D.L.R. 110.

I. In general.

(§ I—7)—**MONEY PLACED FOR SAFE KEEPING—RIGHT TO FOLLOW FUNDS—DEPOSIT IN BANK.**

Money placed with one for safe keeping creates a bailment not a debt, and may be followed up by the bailor in the bank where the money had been deposited in the bailee's name.

Beamish v. Lawlor, 23 D.L.R. 141.

(§ I—8)—**WAREHOUSEMAN—STIPULATION TO RETAIN GOODS—LIEN AT COMMON LAW—INCONSISTENCY.**

If by the agreement of bailment the party owning the goods is entitled to have them immediately and the payment in respect of their storage is to take place at a future time, as in the case of an agreement for monthly settlements with the warehouseman, such is inconsistent with the latter's right to retain the goods until payment, and negatives his claim to a lien at common law. [*Fisher v. Smith*, 4 App. Cas. 1; *Crawshay v. Homfray*, 4 B. & Ald. 50, applied. *Canada Steel & Wire Co. v. Ferguson*, 19 D.L.R. 581, reversed.]

Canada Steel & Wire Co. v. Ferguson, 21 D.L.R. 771, 25 Man. L.R. 320, 8 W.W.R. 416.

II. Rights of bailee.

(§ II—10)—**GRATUITOUS BAILMENT—COMPENSATION—EXPENSES.**

A gratuitous bailee entrusted with money for the purpose of safe keeping is entitled to travelling expenses and costs of exchange incurred in the performance of the trust, but cannot recover any commissions or charges for services performed therein.

Beamish v. Lawlor, 23 D.L.R. 141.

III. Duty and liability of bailee.

(§ III—17)—**MONEY FOR SAFE KEEPING—THEFT—LIABILITY OF GRATUITOUS BAILEE.**

Sech v. Rodnicke, 25 D.L.R. 757, 9 W.W.R. 244, 32 W.L.R. 505, 25 Man. L.R. 685.

(§ III—17)—**INJURY TO HIRED HORSE—NEGLECT OF HIRER.**

The jury having found that it was negligence for the hirer of a horse to allow it to stand harnessed but unbridled in an open place near the shafts of the wagon while he went to the wagon to get the bridle, in consequence of which the horse escaped from his control into a ploughed field, where it lay down and rolled, and in getting up cut itself in the foreleg, the Court will not disturb the verdict.

Gray v. Steeves, 42 N.B.R. 676.

(§ III—17)—**DESTRUCTION OF PROPERTY BY BAILEE—DAMAGES.**

Green Fuel Economiser Co. v. City of Toronto, 8 O.W.N. 541.

(§ III—18)—**DEGREE OF CARE—OPEN SAFE—DESTRUCTION BY FIRE.**

It is not negligence on the part of a bailee, whether his relationship is that for a reward or that of a paid agent entrusted with the moneys of his principal, to leave unlocked the door of a safe where the money was kept while he was using a book which was to be restored to the safe, where after the fire broke out he made such efforts to rescue the money as a reasonable man might be expected to make. [*Northern Elevator Co. v. Western Jobbers*, 20 D.L.R. 889, affirmed.]

Northern Elevators v. Western Jobbers, 24 D.L.R. 605, 9 W.W.R. 343, 32 W.L.R. 630, 25 Man. L.R. 605.

(§ III—18)—**DELIVERY OF DRESS FOR DYEING—LOSS BY FIRE—DEGREE OF CARE.**

When a dress is delivered to a dyer and cleaner establishment to be dyed and cleaned, and the same is destroyed by fire, the contract is one of hire of work, and the proprietor of the establishment is only obliged to prove that he had taken the care of a prudent administrator, and is not obliged to prove that the dress was destroyed by inevitable accident or force majeure to throw the loss on the owner of it, unless it is proved that the proprietor of dyeing and cleaning work has been guilty of fault or negligence.

Moore v. Allen, 47 Que. S.C. 417.

(§ III—22)—GARMENTS FOR REPAIR—LOSS BY FIRE WHILE IN CARE OF THIRD PERSON.

A merchant tailor who receives a garment for repair, and who, without being authorized by the owner, sends it to a cleaning company to be cleaned, is liable for the loss of this garment in a fire which took place in the premises of the said company.

Gadbois v. Lauzon, 47 Que. S.C. 276.

BALLOTS.

See Elections, II.

BANKRUPTCY.

See Insolvency; Assignment for Creditors. Winding-up companies, see Corporations and Companies; Banks.

BANKS.

- I. RIGHT TO DO BUSINESS; POWERS.
- II. STOCKHOLDERS.
- III. OFFICERS AND AGENTS.
 - A. Qualification; election.
 - B. Authority; ratification.
 - C. Liability.
- IV. BANKING.
 - A. Deposits.
 - B. Collections.
 - C. Other transactions; discounts, etc.
 - D. Clearing-house business.
- V. INSOLVENCY.
- VI. SAVINGS BANKS.
- VII. CRIMES.
- VIII. STATUTORY SECURITY TO BANKS.
 - A. What banks may lend on.
 - B. What banks may not lend on.
 - C. Warehouse receipts, bills of lading or statutory securities.
 - D. Penalties.

Rights and liabilities as to bills of exchange, see Bills and Notes; Cheques.

Interest permitted under the Bank Act, see Interest.

Procedure under Winding-up Act (Can.), see Corporations and Companies, VI.

Annotations.

Banking; deposits; particular purpose; failure of; application of deposit: 9 D.L.R. 346.

Effect of war on enemy banks: 23 D.L.R. 375, 379.

How affected by moratorium: 22 D.L.R. 865.

I. Right to do business; powers.

(§ I—4)—PURCHASE OF ENTIRE ASSETS OF ANOTHER BANK—ASSUMPTION OF LIABILITIES.

The purchase by one chartered bank of the entire assets of another chartered bank can only be carried out under statutory authority; and where it is a term of the arrangement as approved by the governor-in-council under secs. 99-111 of the Bank Act, Can., that the purchasing bank shall assume the liabilities of the selling bank, a statutory obligation is created in respect of each liabil-

ity which is enforceable by the creditor of the selling bank. [Davis v. Taff Vale R. Co., [1895] A.C. 542; Watkins v. Naval Colliery Co., [1912] A.C. 693, applied.]

Cameron v. Royal Bank of Canada, 21 D.L.R. 824, 8 S.L.R. 119, 8 W.W.R. 375, 30 W.L.R. 865.

II. Stockholders.

III. Officers and agents.

(See previous Annual Digests.)

IV. Banking.

A. DEPOSITS.

(§ IV A 1—45)—DEPOSIT AND LOAN DISTINGUISHED.

There is a deposit in the legal sense of the word only so long as the preservation of the thing deposited has been the main object of its being placed in the hands of the depository. A document, by which a bank acknowledges having received on deposit a sum of money repayable in ten years on a year's previous notice and carrying interest at 15% payable monthly, is not a deposit but a loan at interest.

Allard v. Demers, 48 Que. S.C. 34.

(§ IV A 1—45)—DEPOSIT BY CUSTOMER—ENTRY IN PASSBOOK—ESTOPPEL—EVIDENCE—FINDING OF FACT OF TRIAL JUDGE.

Collins v. Dominion Bank, 8 O.W.N. 432.

(§ IV A 2—51)—TITLE TO NOTES DEPOSITED AS COLLATERAL—APPLICATION.

A bank becomes a holder for value of notes deposited with it by its customer as collateral to the latter's promissory note not then due, as soon as the customer's indebtedness to the bank matures or at the time when such indebtedness was increased during the currency of the promissory note in question, particularly where the bank held a general letter of hypothecation in respect of all notes, bills and securities lodged with the bank in connection with the customer's account. [Merchants Bank v. Thompson, 3 D.L.R. 577, referred to.]

Canadian Bank of Commerce v. Waldner, 23 D.L.R. 210, 8 S.L.R. 156, 8 W.W.R. 491, 30 W.L.R. 857.

(§ IV A 3—66)—LIABILITY FOR DISHONOURING CHEQUES PASSING CLEARING HOUSE.

A customer of the defendant bank drew certain cheques upon it, which were endorsed by the payees to the plaintiff bank; the cheques went through the Toronto Clearing House in the ordinary way; and, upon presentation to the defendant bank, were dishonoured. The plaintiff bank, being admittedly the lawful holder of the cheques, sued the defendant bank to recover the aggregate amount of the cheques, less payments made thereon, and was held entitled to recover, upon the ground that there was money standing to the credit of the drawer of the cheques at the time they were presented, or that there would have been such

money but for the improper acts of the defendant bank; and that it was, therefore, the duty of the defendant bank, which had received the cheques through the Clearing House, to have marked them good and to have treated them as paid. The effect of the transaction in the Clearing House explained. When the defendant bank, by virtue of the Clearing House transaction, had itself become the holder of the cheques, it had no right, so long as it had or ought to have had funds to answer the cheques, to demand recoupment from the depositing (plaintiff) bank; and the recoupment was obtained by what was in truth a misrepresentation of the real state of affairs. Quære, whether, when a customer draws a cheque upon his bank, and there are funds to answer it when presented, the bank should be at liberty to refuse to honour it, retaining the money to meet some demand of its own which has not yet matured, or to pay some other cheque drawn by the customer; or whether, when cheques come in through the Clearing House, in one bundle, which in the aggregate exceed the amount of the customer's credit, the bank should be at liberty to determine which should be paid and which rejected.

Bank of B.N.A. v. Standard Bank, 34 O.L.R. 648, 9 O.W.N. 216.

(§ IV A 3—67)—CHEQUE FOR PROFESSIONAL SERVICES—STOPPING PAYMENT.

One who gives a cheque for professional services protesting at the same time that the amount claimed is excessive, but believing himself obliged to make the payment in order to obtain the return of documents which he requires, can afterwards stop payment of this cheque if the amount claimed was really too great, it having been given without consideration.

Hamelin v. Vanasse, 47 Que. S.C. 110.

B. COLLECTIONS.

(§ IV B 1—90)—DUTY TO NOTIFY OF PAYMENTS RECEIVED—RIGHT TO APPLY FUNDS TO NOTE.

Where in a contract of sale it is stipulated that the purchasers shall pay the price agreed upon directly to a bank and that the latter shall remit to a tradesman of the vendor a document declaring that the purchasers "are obliged to have all monies due remitted to the bank and as soon as we receive it we will advise you," knowing that the tradesman had advanced goods only on the condition of being paid directly by the bank, the latter by this document incurs an obligation towards these tradesmen not only to notify them when it has received the money from the purchaser, but also to pay over this money even if at the time the bank had claims against the vendor arising out of the discounting of a note of the purchasers in payment of the selling price and out of other matters.

Fortier v. Lemay, 47 Que. S.C. 277.

C. OTHER TRANSACTIONS; DISCOUNTS, ETC.

(§ IV C—111)—GUARANTY OF DRAFTS—BILLS OF LADING ATTACHED—SCOPE OF SECURITY.

A bank's guaranty of the payment of drafts with bills of lading attached, given for a consignment of fruit, implies a condition that the bills should be such as would afford the bank the desired protection; but the fact that the bills of lading were drawn in the name of the seller instead of the buyer, and the shipment being otherwise deliverable upon the order of the seller's agent without the production of the bills, constitutes no impairment of the security, such as will relieve the bank from liability on its guaranty.

Pioneer Bank v. Can. Bank of Commerce, 25 D.L.R. 385, 34 O.L.R. 531, 9 O.W.N. 96.

V. Insolvency.

(§ V—128a) — WINDING-UP — DECEASE OF PERSON NAMED ON LIST OF CONTRIBUTORIES—ORDER SUBSTITUTING EXECUTORS—PRACTICE.

Re Farmers Bank (Dewar's Case), 9 O.W.N. 112.

VI. Savings banks.

VII. Crimes.

(See previous Annual Digests.)

VIII. Statutory security to banks.

C. WAREHOUSE RECEIPTS, BILLS OF LADING OR STATUTORY SECURITIES.

(§ VIII C—181)—ASSIGNMENT OF CHATTEL MORTGAGE.

An assignment of a chattel mortgage by a mortgagee, a trust company, to a chartered bank on the latter taking over the trust company's securities and giving credit therefor, is not contravention of sec. 76 of the Bank Act (Can.), if the transaction was entered into with good faith and without any intention of evading the provisions of that Act. [Bank of Toronto v. Perkins, 8 Can. S.C.R. 603, referred to.]

Royal Bank v. Whieldon, 22 D.L.R. 647, 8 W.W.R. 734, 21 B.C.R. 267.

[Reversed in 52 Can. S.C.R., 26 D.L.R., 9 W.W.R. 776.]

(§ VIII C 2—203) — FURTHER ADVANCES — UNMATURED NOTE OF THIRD PERSON—GENERAL LETTER OF HYPOTHECATION.

The making of further advances by a bank to its customer is a consideration which would apply to all the securities held by it at the time of making such advances and place it in the position of a holder in due course of an unmatured note of a third party payable to its customer and by him endorsed to the bank under the terms of a general letter of hypothecation, where the bank had no notice of any defect in its customer's title to the note at the time of making the further advances on the customer's account in respect of which such promissory note was taken as collateral. [Canadian Bank of

Commerce v. Wait, 1 A.L.R. 68; Bank of B.N.A. v. McComb, 21 Man. L.R. 58, referred to.]

Canadian Bank of Commerce v. McLeod, 21 D.L.R. 767, 7 W.W.R. 1115, 30 W.L.R. 537.

BARRISTERS.

See Solicitors.

BASTARDY.

As ground for libel or slander, see Libel and Slander.

(§ I-1) — TRIAL DE NOVO — AMOUNT OF AWARD.

Where the defendant in bastardy proceedings obtains a trial de novo on an appeal from a magistrate to the County Court sitting with a jury, and without objection allows the case to go to the jury solely upon the question of paternity, he cannot afterwards object that the question of the amount to be awarded should also have been left to the jury and not fixed as it was by the Judge in affirmance of the magistrate's order, on the jury finding against the defendant on the question of paternity.

Overseers of the Poor v. Kennedy, 21 D.L.R. 119, 48 N.S.R. 258.

(§ I-5) — ILLEGITIMATE CHILDREN'S ACT — AFFIDAVIT AS NOTICE OF APPEAL.

The filing of the affidavit required by sec. 29 of the Illegitimate Children's Act takes the place of the usual notice of appeal directed to be given to the magistrate by sec. 750 of the Criminal Code.

Re Pall Sigurdson, 9 W.W.R. 940, 25 Can. Cr. Cas.

BATTERY.

See Assault and Battery.

BAWDY HOUSE.

See Disorderly Houses.

BENEVOLENT SOCIETIES.

- I. IN GENERAL.
- II. LOCAL LODGES.
- III. CONSTITUTION, RULES, AND BY-LAWS.
- IV. MEMBERSHIP; EXPULSION; LIABILITY.
- V. IRREGULARITIES; DISSOLUTION.

See also Associations; Charities; Religious Societies.

I. In general.

II. Local lodges.

(See previous Annual Digests.)

III. Constitution, rules, and by-laws.

(§ III-10) — ENDOWMENT INSURANCE — CONDITIONS — POWER UNDER CONSTITUTION.

A benevolent society has not right after a benefit in nature of an endowment insurance is accrued due to its member so that he became a creditor of the society for the

amount thereof, to forfeit or impair such creditor's rights to his debt, or to postpone his payment, or to make its payment conditional upon the member paying further assessments, although the society had power under its constitution to alter its constitution and by-laws, other than the fundamental declaration under which it was incorporated, which included as one of the objects of the society the payment of endowment at the age in question. [Grainger v. O. of Can. Home Circles, 31 O.L.R. 461, affirmed; Re Ontario Ins. Act and Supreme Legion Select Knights, 31 Ont. R. 154, distinguished.]

Grainger v. Order of Can. Home Circles, 21 D.L.R. 110, 33 O.L.R. 116, 7 O.W.N. 649.

(§ III-10) — AMENDMENT — PAYMENT OF ENDOWMENT POLICY.

The amendment to the Ontario Insurance Act, made by 3 Edw. VII. (Ont.), ch. 15, sec. 8 [R.S.O. 1914, ch. 183, sec. 185], enabled a benevolent society subject to the provisions of the Ontario Insurance Act to so amend its constitution as to make the one-half of the benefit which was originally payable in a lump sum to the member on his attaining the endowment age, so that the same would thereafter be payable in fixed yearly instalments commencing at the endowment age; but the statute does not enable the society in the absence of any reservation to that effect in its constitution to postpone or change the endowment age already fixed.

Grainger v. Order of Home Circles, 21 D.L.R. 110, 33 O.L.R. 116, 7 O.W.N. 649.

(§ III-10) — ACTION BY MEMBER FOR BENEFITS — COMPLIANCE WITH BY-LAW AS CONDITION PRECEDENT — WAIVER BY PLEA TO MERITS.

A member of a benefit association who makes a claim for benefits which is refused by the executive council, and who without appealing from such decision to the general council of the society sends through his attorney two letters to the association, has sufficiently conformed to a by-law of the association providing, that in order to be entitled to take action against the society in a civil Court the member must first have exhausted all the means put at his disposal by statute. If in such action the society joins issue upon the merits and calls witnesses, it thereby acquiesces in the jurisdiction of the Court.

Routhier v. L'Alliance Nationale, 48 Que. S.C. 193.

(§ III-10) — BENEFIT CERTIFICATE — SOCIETY SUBJECT TO ACT RESPECTING BENEVOLENT, PROVIDENT AND OTHER SOCIETIES, R.S.O. 1897, CH. 211 — REPEAL OF ACT BY 7 EDW. VII. CH. 34, SEC. 211 (3) — PRESERVATION OF RIGHTS OF BENEFICIARIES — RULES OF SOCIETY — DESIGNATION OF NEXT OF KIN AS BENEFICIARIES — WILL OF ASSURED — LIEN FOR PREMIUMS PAID.

Re Nicholson and C.O.F., 7 O.W.N. 623.

IV. Membership; expulsion; liability.
(See previous Annual Digests.)

BETTING.

See Gaming; Lottery.

BICYCLES.

Collision with cyclists, see Automobiles;
Negligence; Highways; Street Railways.

BIGAMY.

As ground for annulment of marriage, see
Marriage; Divorce and Separation.

BILLS AND NOTES.

I. NATURE; REQUISITES AND VALIDITY.

- A. In general.
- B. Validity generally; delivery.
- C. Consideration.
- D. Negotiability.

II. ACCEPTANCE.

III. INDORSEMENT AND TRANSFERS.

- A. In general.
- B. Liability of indorsers.
- C. Discharge of indorsers.
- D. Transfers without indorsement.

IV. PRESENTMENT; DEMAND; NOTICE; PROTEST.

- A. In general; necessity.
- B. Sufficiency.
- C. Notice of protest; certificate.
- D. Damages for non-acceptance, non-payment and protest.

V. RIGHTS AND LIABILITIES OF TRANSFEREES.

- A. Extent of rights and protection generally.
- B. Who are protected as bona fide purchasers.

VI. ACTIONS AND DEFENCES; ACCELERATION; MATURITY; EXTENSION AND RENEWAL.

- A. In general; right of indorser to sue.
- B. Maturity; extension; renewal.
- C. Defences.

VII. RECOVERY BACK OF PAYMENT MADE.

Power of corporation to make and indorse, see Corporations and Companies.

As to cheques, see Banks, II; Cheques.

Parol evidence as to, see Evidence, VI.

Liabilities growing out of marital relationship, see Husband and Wife.

Surety on, see Principal and Surety; Guaranty.

Lien notes, see Sale.

Validity affected by alteration, see Alteration of Instruments.

Annotations.

Filing in blanks: 11 D.L.R. 27.

Presentment at place of payment: 15 D.L.R. 41.

Renewal; promissory note; effect of renewal on original note: 2 D.L.R. 816.

How affected by moratorium: 22 D.L.R. 865.

Effect of war on alien bills and notes: 23 D.L.R. 375, 377.

I. Nature; requisites and validity.

A. IN GENERAL.

(§ I A—2) — **NEGOTIABILITY** — "VALUE RECEIVED" STRUCK OUT—"ACCOUNT OF LUMBER TO BE SHIPPED" ADDED.

An instrument in the form of a promissory note payable to order is none the less a promissory note because of the words "value received" being struck out and the words "account of lumber to be shipped" being inserted in lieu thereof. [Siegel v. Chicago Trust & Savings Bank, 23 N.E.R. 417; First National Bank v. Lightner, 88 Pac. R. 59; Chase v. Kellogg, 13 N.Y. Supp. 351, referred to.]

Merchants Bank of Canada v. Bury, 21 D.L.R. 495, 33 O.L.R. 204, 8 O.W.N. 239.

(§ I A—2)—**PROMISSORY NOTE—WHAT CONSTITUTES—"THRESHING MEMORANDUM."**

A promise to pay subjoined to a "threshing memorandum" acknowledging the quantity and price of threshing certain grain, may constitute the document a promissory note and therefore transferable by endorsement although the payee is not indicated therein by name, if the document shews with reasonable certainty that the payee is the contractor for the threshing who had acquired a lien under the Threshers Lien Act, Alta.

J. I. Case Threshing Machine Co. v. Desmond, 22 D.L.R. 455, 8 A.L.R. 298, 7 W.W.R. 895.

B. VALIDITY GENERALLY; DELIVERY.

(§ I B—11)—**ILLEGALITY OF CONSIDERATION—VIOLATION OF PROHIBITION ACT.**

A bill of exchange given for the sale of liquor in violation of the Prohibition Act is illegal and unenforceable, although such sale was effected by a resident agent for a non-resident creditor not having paid the license fee required by the Act. [Brown v. Moore, 32 Can. S.C.R. 93, followed.]

Wickwire v. Carver, 24 D.L.R. 821.

C. CONSIDERATION.

(§ I C—15) — **FORBEARANCE — ACCOMMODATION NOTE.**

The forbearance of a creditor, under an arrangement by which the debtor was given a reasonable time to realize on securities owned by him in order to pay the debt, is a sufficient consideration to support an accommodation note given by a third party directly to the creditor as collateral security.

Union Bank v. Dodds, 22 D.L.R. 545, 31 W.L.R. 521.

(§ I C—15) — **FUTURE DEBTS — RIGHTS OF TRANSFEREE.**

A promissory note given on account of an anticipated threshing bill, on which no liability was in fact incurred, is unenforceable for failure of consideration even in the hands of a transferee for value who acquired it with knowledge of its true conditions. [Cossitt v. Cook, 17 N.S.R. 84, applied.]

Harris v. Wilson, 23 D.L.R. 86, 8 S.L.R. 220, 8 W.W.R. 1184, 31 W.L.R. 825.

(§ I C—15)—NOTE PAYABLE TO CORPORATION
—INDORSEMENT BY OFFICER NO PROOF OF
CONSIDERATION.

Due negotiation of a note payable to a company is not proved by simply shewing that it is indorsed by an officer who has general authority to indorse, if no consideration has passed to the company.

Magrath v. Cook, 8 A.L.R. 318, 30 W.L.R. 701, 7 W.W.R. 1350.

(§ I C—15)—ACCOMMODATION NOTE—SECURITY FOR.

The giver of security for the maker of an accommodation note cannot plead want of consideration when he made it expressly to give value to a bill of exchange which without him would not have had such value. The principal debtor for a note cannot be relieved from the obligation to pay it by offering the holder to reimburse him merely what the latter had paid.

David v. Beauregard, 47 Que. S.C. 312.

(§ I C—24)—COLLATERAL NOTE BEFORE RENEWAL OF ORIGINAL.

Where a promissory note is by the payee deposited with a bank together with the usual letter of hypothecation as collateral security to a note made by the payee to the bank—the latter note not having matured at the time of such deposit—and the latter note matures before the due date of the collateral note and is renewed by the bank—the bank at that time not having notice of a defect in the collateral note—the renewal is sufficient consideration for the collateral note. [*Can. Bank of Commerce v. Waldenar & Murphy*, 30 W.L.R. 857, followed. *Can. Bank of Commerce v. Waite*, 7 W.L.R. 255; *Bank of B.N.A. v. McComb*, 18 W.L.R. 94; *Merchants Bank v. Williams*, 6 W.W.R. 563, distinguished.]

Canadian Bank of Commerce v. Barlow, 31 W.L.R. 664.

(§ I C—24)—ACCOMMODATION NOTE—NOVATION.

The maker of an accommodation note in favour of a third party who, before its maturity, pays the amount of the note to a holder who had discounted it on condition that the holder should deliver to him in writing with the paid note another note signed by himself, becomes a creditor of the latter. There is then in accordance with the provisions of art. 1169, C.C., a novation by a change of debtor from the first maker of the accommodation note to the maker of the second note. The consideration of the second note is that the holder of the first note receives from the maker the amount which he had paid on discounting it, and that he is thus immediately put in funds.

Coté v. Dufresne, 47 Que. S.C. 215.

D. NEGOTIABILITY.

(§ I D 1—31)—FILLING UP BLANKS—AUTHORITY.

Filling up a blank in a promissory note at the time of its delivery to the payee com-

pletes the negotiability thereof, and where such fact is established by the evidence, the question whether it was filled up strictly in accordance with the authority given, as mentioned in secs. 31 and 32 of the Bills of Exchange Act, R.S.C. 1906, ch. 119, has no application, and the note will be enforceable in the hands of an indorsee who had obtained it in due course without knowledge of any defects. [*Ray v. Willson*, 45 Can. S.C.R. 401; *Smith v. Prosser*, [1907] 2 K.B. 735, distinguished.]

McBride v. Rusk, 25 D.L.R. 39, 33 W.L.R. 20.

II. Acceptance.

(See previous Annual Digests.)

III. Indorsement and transfers.

A. IN GENERAL.

(§ III A—56)—SURETY SIGNING CONDITIONALLY—CONDITION NOT FULFILLED—RELEASE OF SURETY.

Where a person signs a note as surety on condition that it is not to be used until a co-surety has signed it, any person who, having knowledge of that condition, discounts the note without first obtaining the signature of the co-surety holds it freed from any liability on the part of the surety who did sign it and such surety is released. [*Ellesmere Brewing Co. v. Cooper*, [1896] 1 Q.B. 75, referred to.]

Ripley v. Vellie, 21 D.L.R. 723, 8 S.L.R. 197, 8 W.W.R. 764, 32 W.L.R. 184.

(§ III A—59a)—NOTE—SURETIES EXECUTING—CONDITION ATTACHED—RELEASE OF SURETIES.

Loneragan & Hansford v. Saskatoon Co., 21 D.L.R. 866, 8 S.L.R. 201, 8 W.W.R. 1031, 31 W.L.R. 673.

B. LIABILITY OF INDORSERS.

(§ III B 1—60)—PROMISSORY NOTES—LIABILITY OF INDORSER—INTENTION—TRANSFER OF CLAIM—EVIDENCE.

Frame v. Hay, 7 O.W.N. 738.

C. DISCHARGE OF INDORSERS.

(§ III C—76)—INDORSEMENT FOR ACCOMMODATION—RENEWAL.

A note was signed by a company in favour of an accommodation payee who indorsed it and deposited it in a bank to the credit of the maker. The bank after its maturity transferred the note to the directors of the company. While it was in possession of the bank the company gave instructions for its payment out of moneys on deposit. The bank did not carry out the instructions, and the note, on request of the company, was renewed from time to time. In these circumstances, and notwithstanding the renewals, the note should be considered as paid and the indorser could not be held liable in an action by a third party, acting as prête-nom of the directors.

Friedman v. Scott, 24 Que. K.B. 21.

IV. Presentment; Demand; Notice; Protest.**A. IN GENERAL; NECESSITY.****(§ IV A—85)—JOINT MAKERS OF LIEN NOTE—DEFAULT BY ONE—NOTICE TO OTHER.**

The joint maker of a lien note given for the sale of a plow purchased by another is not entitled to notice of default of the principal obligor in order to hold him liable on the note. [*Hitchcock v. Humfrey*, 12 L.J. C.P. 235; *Carter v. White*, 25 Ch.D. 666, applied; *Black v. Ottoman Bank*, 15 Moore P.C. 472, referred to.]

Massey-Harris Co. v. Baptiste, 24 D.L.R. 753, 9 W.W.R. 149, 32 W.L.R. 435, 9 A.L.R. 71.

[Followed in *Crown Life Ins. Co. v. Clarke*, 25 D.L.R. 519, 9 A.L.R. 97.]

(§ IV A—85)—STIPULATION AS TO PLACE—EFFECT OF NON-COMPLIANCE.

Under sec. 183 of the Bills of Exchange Act (Can.), a failure to make presentment of payment of a note at the place specified therein does not necessarily discharge the maker from liability on the note; but if upon an action on the note before presentation it appears that there were sufficient funds available at the place of payment to satisfy the note if it had been presented, the Court may award the costs of the action against the plaintiff. [*Union Bank v. MacCullough*, 7 D.L.R. 694, followed; see Annotation, 15 D.L.R. 41.]

Canadian Bank of Commerce v. Bellamy, 25 D.L.R. 133, 8 S.L.R. 381, 9 W.W.R. 587, 33 W.L.R. 8.

B. SUFFICIENCY.**(§ IV B—90)—PROMISE TO PAY.**

A promise to pay a promissory note after it has fallen due is prima facie evidence of presentment. [*Deering v. Hayden*, 3 Man. L.R. 219, followed.]

Sparrow v. Corbett, 18 B.C.R. 356.

(§ IV B—92)—CHEQUE—"BANK"—DELAY IN PRESENTATION—DISCHARGE.

F., in settlement of a claim for material supplied, sent to R. a cheque drawn on the Dominion Trust Company. R. did not present the cheque for five days. Upon presentation it was dishonoured, the Dominion Trust Co. having suspended payment. Held, that if the Dominion Trust Co. was an incorporated bank or a savings bank so as to come within the definition of bank contained in the Bills of Exchange Act, F. was discharged as to the amount of actual damage suffered by him through the delay in presentation, and R., under sec. 186, sub-sec. (b) of the Act, became a creditor in lieu of F. of the Dominion Trust Co. to that amount, but that if the Dominion Trust Co. was not a "bank" within the above definition, not only was F. discharged in respect of the bill, but he was also discharged from his liability on the original consideration for which it was given.

Revelstoke Sawmill Co. v. Fawcett, 8 W.W.R. 477.

V. Rights and Liabilities of transferees.**A. EXTENT OF RIGHTS AND PROTECTION GENERALLY.****(§ V A 1—105)—CONDITIONAL ACCEPTANCE—KNOWLEDGE OF CONDITIONS.**

A bank receiving a bill of exchange before maturity, with knowledge of the conditions as to its acceptance, does not stand in the position of a holder in due course, and can only claim on it by way of equitable assignment.

Standard Bank v. Wettlaufer, 23 D.L.R. 507, 33 O.L.R. 441, 8 O.W.N. 187.

(§ V A 2—115)—HOLDER IN DUE COURSE—WHEN.

An action upon two promissory notes:—Held, on the facts, the plaintiffs were not holders in due course for valuable consideration, and the plaintiffs' claim was dismissed with costs.

First State Bank v. Clouthier, 31 W.L.R. 504.

(§ V A 2—116)—ACCOMMODATION CHEQUE—RIGHTS OF BONA FIDE HOLDER—BANK.

A person is not relieved from liability on his accommodation cheque given to the manager of a bank to enable him to buy shares of the bank which the bank paid in good faith; nor will the manager's promise to reimburse the maker of the cheque for moneys so advanced affect such liability, where the transaction was carried on without the knowledge or authority of the bank.

Pyke v. Sovereign Bank, 24 D.L.R. 720, 24 Que. K.B. 198, affirming 14 D.L.R. 383.

(§ V A 2—121)—LOST CHEQUE FOR WAGES—RIGHTS OF BANK UPON FORGED INDORSEMENT.

There can be no recovery for the amount of wages represented by a cheque which was lost by the payee and later came into the possession of a bank upon a forged indorsement, where for the protection of the maker the payee is unable to deliver possession of the cheque.

Kelly v. Can. Pac. R. Co., 25 D.L.R. 79, 9 W.W.R. 531, 32 W.L.R. 891.

B. WHO ARE PROTECTED AS BONA FIDE PURCHASERS.**(§ V B 1—130)—HOLDER IN DUE COURSE—NOTE MARKED "RENEWABLE"—BANKABLE NOTE.**

A promissory note marked "renewable," and indorsed to a bona fide transferee before its maturity does not prevent such transferee from being a holder in due course because of his failure to make inquiries to ascertain the title of the transferor, particularly where the note was originally given as "bankable paper" with power of discounting it.

Pennoyer Co. v. Williams Machinery Co., 24 D.L.R. 607, 34 O.L.R. 493, 8 O.W.N. 279, 9 O.W.N. 84.

(§ V B 3-147)—**HOLDER IN DUE COURSE—COLLATERAL TO BANK—NON-EXISTENCE OF DEBT.**

A promissory note indorsed over to a bank by the payee named in the note, even as a collateral, does not necessarily constitute the bank a holder in due course, where there is no existing indebtedness on the part of the payee to the bank and is, therefore, not subject to summary judgment in face of a plea that the note was given to the payee on account of a sale of land to which no title could be made. [Bank of B.N.A. v. McComb, 21 Man. L.R. 58, applied.]

Royal Bank v. Hickney, 24 D.L.R. 525, 9 W.W.R. 60, 32 W.L.R. 349.

(§ V B 3-147)—**COLLATERAL SECURITY TO BANK—HOLDER IN DUE COURSE.**

The fact that a note was discounted by a bank on the strength of another note which it had required as collateral security does not in any way negative the fact that consideration was given for the note sued on, which, if received in good faith and without notice of defects in the title of the payee, makes the bank a holder in due course under sec. 56 of the Bills of Exchange Act.

Sparta State Bank v. Alberta Financial Brokers, 25 D.L.R. 321, 9 W.W.R. 851.

(§ V B 3-147)—**COLLATERAL SECURITY TO BANK—HOLDER IN DUE COURSE—AUTHORITY OF CORPORATION OFFICER TO INDORSE.**

Standard Bank v. McCullough, 25 D.L.R. 813, 8 A.L.R. 320, 7 W.W.R. 1282, 30 W.L.R. 708.

(§ V B 3-147)—**ACCOMMODATION NOTE—INDORSEMENT TO BANK AS COLLATERAL SECURITY FOR DEBT OF PAYEE—DEBT PAID BEFORE ACTION BEGUN—CLAIM OF BANK TO HOLD NOTE FOR SUBSEQUENT DEBT—EVIDENCE—FINDINGS OF FACT OF TRIAL JUDGE—APPEAL.**

Bank of Ottawa v. Hall, 8 O.W.N. 15.

VI. Actions and defences; acceleration; maturity; extension and renewal.

A. IN GENERAL; RIGHT OF INDORSER TO SUE.

(§ VI A-150)—**SEVERAL LIEN NOTES—DEFAULT IN ONE—ACCELERATION CLAUSE—RIGHT TO SUE ON ALL NOTES.**

Where several lien notes, given on the conditional sale of a chattel, each contained a proviso that in default of payment of such note or of any of the other notes, the whole amount of the price and interest and all obligations and notes given therefor should forthwith become due and payable without making presentment or demand, which were thereby waived, the conditional vendor may sue on all of the lien notes where one only is in default; no preliminary notice is necessary of an intention to claim the benefit of the acceleration clause, or, if such were necessary, the service of the writ was sufficient, subject to any right as to costs which

might have arisen had the defendant forthwith paid the note which was past due. [Westaway v. Stewart, 2 S.L.R. 178, distinguished.]

International Harvester Co. v. Knox, 21 D.L.R. 807.

(§ VI A-150)—**PROMISSORY NOTE—ACTION ON—PAYMENT—ONUS—FAILURE TO SATISFY—INTERPLEADER ISSUE—ASSIGNMENT OF CHOSE IN ACTION—VALIDITY—EVIDENCE—FRAUDULENT INTENT—CREDITORS UNDER FOREIGN JUDGMENT—PROOF OF JUDGMENT—RIGHT TO SHARE IN FUND IN COURT.**

St. Jean v. Laurin, 7 O.W.N. 702.

(§ VI A-150)—**PROMISSORY NOTE—APPLICATION OF PAYMENTS—RENEWAL—WAIVER—GUARANTY—MISREPRESENTATION—FINDINGS OF FACT OF TRIAL JUDGE.**

Bank of Toronto v. Hall, 8 O.W.N. 465.

(§ VI A-150)—**PROMISSORY NOTE—EVIDENCE—INTEREST.**

McKay v. Good and Rochester, 8 O.W.N. 296.

(§ VI A-150)—**PROMISSORY NOTE—COMPANY—SETTLEMENT OF DIFFERENCES—EVIDENCE.**

Toronto Brick Co. v. Brandon, 7 O.W.N. 646.

B. MATURITY; EXTENSION; RENEWAL.

(§ VI B-155)—**MATURITY—PREMATURE ACTION.**

There can be no recovery on a note in an action commenced before its maturity, even though forming part of an action on other notes that had matured.

Canadian Bank of Commerce v. Bellamy, 25 D.L.R. 133, 8 S.L.R. 381, 9 W.W.R. 587, 33 W.L.R. 8.

(§ VI B-155)—**LIEN NOTE—ACCELERATION CLAUSE—INSECURITY—RIGHT OF ASSIGNEE.**

The plaintiff being the assignee of three lien notes made by defendant in favour of one Moore, purported, before maturity of any of them, to declare the notes due in pursuance of power therein contained, and brought this action to recover payment. Such power was as follows: "And if default is made in the payment of this note or any renewal or renewals thereof, or should D. H. Moore deem this note or any renewal or renewals insecure, of which he shall be sole judge, he shall have full power to declare this note or any renewal or renewals thereof due and payable at any time"—Held, that it was incumbent on the plaintiff to prove that the notes were as a matter of fact deemed insecure by him at the time he purported to declare the same due, and the plaintiff having failed to prove this, his action must fail. Quære, whether in any event the plaintiff could exercise such power since by the terms of the notes such power was given only to Moore and might have been so given

because of special personal confidence reposed in Moore by the defendant.

Harris v. Murk, 8 S.L.R. 90, 7 W.W.R. 1338, 32 W.L.R. 53.

(§ VI B-158)—AGREEMENT FOR RENEWAL—SCOPE OF.

A promissory note given in payment of merchandise under an agreement that it is to be renewed after maturity for any portion of the goods unsold entitles the maker to but one renewal. [Innes v. Munro, 1 Ex. 473, followed.]

Pennoyer Co. v. Williams Machinery Co., 24 D.L.R. 607, 34 O.L.R. 493, 9 O.W.N. 84.

(§ VI B-158)—ACTION ON NOTE—DEFENCES—RENEWAL—ABSENCE OF CONSIDERATION—FAILURE TO ALLOT SHARES—FRAUD.

Crooks v. Cullen, 25 D.L.R. 817, 32 W.L.R. 308.

(§ VI B-158)—AGREEMENT TO RENEW—ONUS.

Where the defence to an action on a promissory note is an engagement to renew the same, it is incumbent on the defendant to shew that he has taken the proper steps towards such renewal. [Maillord v. Page, L.R. 5 Ex. 312, referred to.]

Norton v. Kennealy, 8 W.W.R. 799.

C. DEFENCES.

(§ VI C-160)—MISREPRESENTATIONS—TIME OF PAYMENT.

Where there has been no deceit as to the actual terms of the note, fraud is not shewn upon which to invalidate the sale of goods by the selling agent's representation that the buyer would not have to pay anything on the price until May 1, while at the same time the agent obtained the buyer's signature to a promissory note maturing at an earlier date, which note remaining in the possession of the payee, the buyer was not in fact called upon to pay sooner.

McDonald v. Morgan, 22 D.L.R. 705, 49 N.S.R. 1.

(§ VI C-160)—ACTION BY ASSIGNEE FOR CREDITORS—COUNTERCLAIM FOR ACCOUNTING.

The defendant held a promissory note of one Gray, who made an assignment for the benefit of his creditors to the plaintiff. On the note coming due the plaintiff and defendant arranged for the renewal thereof by the defendant signing a note in favour of the plaintiff, who carried the note in his account as assignee for Gray. In an action for payment of the note:—Held, that there should be judgment for the plaintiff, but that the defendant was entitled to counterclaim for an accounting by the plaintiff of the moneys collected by him as assignee of the Gray estate which were applicable to the debt that Gray owed the defendant. [Macdonald v. Carington, 4 C.P.D. 28, distinguished.]

Scrim Lumber Co. v. Ross, 20 B.C.R. 89.

(§ VI C-160)—PURCHASE PRICE OF COMPANY—SHARES—REBATE—CREDIT ON NOTES—COUNTERCLAIM—RECOVERY OF BALANCE DUE ON NOTES—DAMAGES.

Garrett v. Fischer, 7 O.W.N. 666.

(§ VI C-160)—CONDITIONAL SIGNATURE BY DEFENDANTS FOR ACCOMMODATION OF UNINCORPORATED ASSOCIATION—BURDEN OF PROOF—EVIDENCE—CONTRADICTORY TESTIMONY—FINDINGS OF FACT OF TRIAL JUDGE—AMOUNT DUE UPON NOTE—CREDITS—APPLICATION OF PAYMENTS—INTEREST AFTER DEMAND—RATE OF.

Bank of Ottawa v. Shillington, 9 O.W.N. 315.

(§ VI C-167)—TRANSFER OF SHARES—FAILURE OF CONSIDERATION.

An executor suing upon promissory notes given by the defendant to the testator under the latter's executory agreement for the transfer to the maker of the note of certain shares in a vessel so soon as the note should be paid, cannot recover on the note if the testator had treated the agreement as non-existent, made no tender or offer of the shares, made no demand under the notes, and had treated the defendant as having no interest in the vessel by selling the shares in question without referring to the defendant.

Kaulbach v. Begin, 21 D.L.R. 77, 49 N.S.R. 66.

(§ VI C-167)—ACTION ON CHEQUE FOR PRICE OF GOODS—FAILURE OF CONSIDERATION.

A defence to an action based upon cheques which alleges that the cheques were given for the price of goods part only of which had been delivered, which apart from the remainder of the goods ordered were useless to the purchaser, and the failure to deliver the remainder caused to the latter damages to an amount greater than the sum claimed, is not a demand in compensation but a plea of failure of consideration.

Graham v. Brodeur Co., 47 Que. S.C. 56.

(§ VI C-167a)—ILLEGAL CONSIDERATION—PROMISSORY NOTE—ACCOMMODATION MAKERS—AGREEMENT TO STIFLE PROSECUTION—FAILURE TO SHEW—FINDINGS OF FACT OF TRIAL JUDGE.

Herrington v. Carey, 8 O.W.N. 451, 9 O.W.N. 75, affirming 8 O.W.N. 451.

VII. Recovery back of payment made.

(See previous Annual Digests.)

BILLS OF EXCHANGE.

See Bills and Notes; Cheques; Banks.

BILLS OF LADING.

Conditions in, see Carriers.

BILLS OF SALE.

I. IN GENERAL.

II. STATUTORY REQUIREMENTS.

A. Registration.

B. Seizure.

III. SUBJECT MATTER OF BILLS OF SALE.

- A. In general.
- B. Chattels, capable of complete delivery.
- C. Fixtures.
- D. Machinery.
- E. Grantor not owner.
- F. After-acquired chattels.

IV. RIGHTS AND LIABILITIES OF PARTIES.

- A. Rights of grantor.
- B. Rights of grantee.
- C. Transfer.

Chattel mortgage or bill of sale as security, see *Chattel Mortgage*.

Sale of Goods, Bulk Sales, see *Sales*.

Validity as preference to creditors, see *Assignments for Creditors*; *Fraudulent Conveyances*; *Insolvency*.

As security to banks, see *Banks*.

As to priorities, see *Levy and Seizure*; *Priorities*; *Execution*; *Chattel Mortgage*.

I. In general.

(See previous Annual Digests.)

II. Statutory requirements.**A. REGISTRATION.****(§ II A—5)—SALE OF SHIP—WRITTEN INSTRUMENT.**

Where a boat is not registered and it is not shewn that she ought to have been registered, a written instrument will not be held to be essential to evidence her sale. [*Benyon v. Cresswell*, 12 Q.B. 899, 900, applied.]

Olympic Stone Construction v. Momsen & Rowe, 21 D.L.R. 271, 21 B.C.R. 120, 8 W.W.R. 79, 30 W.L.R. 711.

(§ II A—5)—NON-COMPLIANCE WITH STATUTORY PERIOD—ATTACK BY LIQUIDATOR.

A chattel mortgage of a corporation, invalid against creditors under the Bills of Sale Ordinance (Alta.), for non-registration within the statutory period, may be attacked by the liquidator of the corporation as representing the creditors. [*Nat. Trust v. Trusts & Guaranty*, 5 D.L.R. 459, followed.]

Imperial Canadian Trust Co. v. Wood Vallance, 24 D.L.R. 241, 9 W.W.R. 44, 32 W.L.R. 260.

(§ II A—5)—AGREEMENT FOR GROWING CROP NOT INTENDED FOR SECURITY.

Section 9 of the Bills of Sale Act (Alta.) has no application to an agreement for the delivery of a portion of a growing crop for money advances, where the agreement is not intended as a security.

International Harvester Co. v. Jacobsen, 24 D.L.R. 632, 9 W.W.R. 87, 32 W.L.R. 332.

(§ II A—5)—AFFIDAVIT OF BONA FIDES BY OFFICER OF COMPANY—SUFFICIENCY.

An affidavit of bona fides in support of bill of sale made to a company and made by an officer of the company to the effect that such bill of sale "is not for the purpose of holding or of enabling me this deponent to

hold" the goods against the creditors of the bargainer, is insufficient.

Walter v. Leduc, 8 W.W.R. 360.

III. Subject matter of bills of sale.**B. CHATTELS, CAPABLE OF COMPLETE DELIVERY.****(§ III B—20)—CHANGE OF POSSESSION — GOODS IN CUSTODY OF BAILEE.**

An unregistered bill of sale of a concrete mixer with the name of the bargainee left blank, in the possession of a bailee who had been notified by the bargainee, after a month's delay, of the change of ownership thereof, does not constitute "an immediate delivery followed by an actual and continued change of possession" within the meaning of sec. 3 of the Bills of Sale and Chattel Mortgage Act (Man.), and therefore void against an execution creditor. [*Jones v. Henderson*, 3 Man. L.R. 433; *Jackson v. Bank*, 9 Man. L.R. 75; *Richardson v. Gray*, 29 U.C.Q.B. 360; *Ex p. Close*, 14 Q.B.D. 386, applied.]

Missisquoi Lautz v. North, 25 D.L.R. 69, 9 W.W.R. 317, 32 W.L.R. 591.

IV. Rights and liabilities of parties.

(See previous Annual Digests.)

BLASTING.

Injuries to workmen caused by, see *Master and Servant*.

Injuries in general, see *Negligence*; *Mines and Minerals*.

BOARD OF EDUCATION.

See *Schools*.

BOARD OF HEALTH.

See *Health*; *Schools*.

BOARD OF RAILWAY COMMISSIONERS.

See *Railway Commission*; *Carriers*; *Railways*; *Street Railways*; *Telephones*; *Telegraphs*.

BOATS.

See *Shipping*; *Admiralty*.

Seamen's wages, or liens for, see *Seamen*; *Salvage*.

BONDS.**I. IN GENERAL; FOR PRIVATE OBLIGATIONS.****II. FOR INDEMNITY AND SECURITY.**

- A. In general.
- B. For fidelity of employees or corporate officers.
- C. By public officers.
- D. By public depository.

III. COMMERCIAL AND MUNICIPAL.

- A. Corporate bonds.
- B. Municipal bonds.

On appeal, see *Appeal*, III.

As to bail bonds, see Bail and Recognizance.

Security for costs, see Costs.

Of municipal corporations, authorization of, see Municipal Corporations.

Corporate debentures, see Corporations and Companies.

Railway subsidies, see Railways; Street Railways.

Suretyship liability in general, see Principal and Surety; Guaranty.

I. In general; for private obligations.

(See previous Annual Digests.)

II. For indemnity and security.

A. IN GENERAL.

(§ II A—5)—INDEMNITY ON STAY OF EXECUTION—WANT OF CORPORATE SEAL—LIABILITY.

A bond filed to obtain a stay of execution and signed under his own hand and seal in the name of the company by the local agent of a non-resident company, the company having given the agent power to canvass for the company and to issue bonds, is binding, although not under the corporate seal of the company—and if consideration were required to support it the premium paid and the stay of execution obtained were sufficient, as between the company and the person bonded and the obligee respectively. An alternative claim against the agent for damages for breach of warranty of authority was dismissed without costs.

Calhoun v. Maryland Casualty, 31 W.L.R. 269.

(§ II A—6)—INTERPLEADER BOND—EXECUTIONS—LIABILITY.

The liability of obligors upon an interpleader bond is not confined to the amount remaining due on the executions, but other creditors having executions in the sheriff's hands are entitled to share in the funds represented by the bond.

McPherson v. U.S. Fidelity & Guaranty Co., 24 D.L.R. 77, 33 O.L.R. 524, 8 O.W.N. 299.

(§ II A—9)—BUILDING CONTRACTOR'S BOND—EXTENT OF SURETY'S LIABILITY.

G. agreed to erect a building and to lease the same when completed to M., the agreement containing a stipulation that rent was not to be chargeable until the building was finished, and fixing damages for breach of the agreement at \$20 per day. Upon G. becoming financially embarrassed, U. went surety for the performance of the agreement by G. G. becoming further embarrassed, M. at his own cost proceeded with the work:—Held, upon the facts, and inasmuch as the agreement contained no stipulation that M. could, in default of G. completing the building, undertake the work, the surety could not be called upon to assume any further liability than the said \$20 per day.

Canadian Fairbanks Morse v. U.S. Fidelity, 9 W.W.R. 48, 32 W.L.R. 316, 26 D.L.R.

B. FOR FIDELITY OF EMPLOYEES OR CORPORATE OFFICERS.

(§ II B—15)—RENEWAL OF BOND—CONTENTS OF APPLICATION.

A new bond replacing an expiring bond of fidelity insurance in the same company and in favour of the same employer upon the same risk is a "renewal" of the original insurance, and the answers of the assured on the application for the original bonding are to be looked at and their materiality considered in an action on the new bond issued without fresh questions to the assured where the original answers were stipulated to be the basis of the bond then applied for "or any renewal or continuation thereof or of any substituted bond." [Town of Arnprior v. U.S. Fidelity, 20 D.L.R. 929, 30 O.L.R. 618, affirmed; Jordan v. Provincial Provident, 28 Can. S.C.R. 554, considered.]

Arnprior v. U.S. Fidelity and Guaranty Co., 21 D.L.R. 343, 51 Can. S.C.R. 94.

III. Commercial and municipal.

A. CORPORATE BONDS.

(§ III A—55)—PRIORITY IN ISSUING—CREDITORS—MONEY ADVANCES.

A second issue of corporate bonds which were by a majority of bondholders declared to constitute a priority over a first issue, for the purpose of enabling the corporation to raise money in re-adjustment of its finances, will operate as a priority only in favour of holders who acquired them for present money advances to the corporation, but not in favour of creditors holding them as collateral security for past indebtedness.

Re B.C. Portland Cement Co., Ltd., 22 D.L.R. 609, 8 W.W.R. 1119, 31 W.L.R. 938. [Affirmed, March 7, 1916.]

B. MUNICIPAL BONDS.

(§ III B 8—105)—ACTION FOR CANCELLATION—TERMINATION OF OFFICE.

An action brought by the former treasurer of a municipality and his sureties, upon a bond given by them to secure the due performance of the duties of the office, to compel the cancellation of the bond, after the treasurership had come to an end, the treasurer's accounts had been audited and the audit adopted by the municipality, and after payment over by the old to the new treasurer, duly made accordingly, was dismissed with costs.

Shewfelt v. Kincardine, 35 O.L.R. 39, 9 O.W.N. 237.

BOOK DEBTS.

Transfer of book debts, see Assignment.

Attachment of debts, see Garnishment; Attachment.

BORNAGE (QUE.)

See Boundaries.

BOUNDARIES.

I. OF DOMINION, PROVINCE OR MUNICIPALITY.

II. OF PRIVATE PROPERTY.

- A. In general; rules for fixing.
- B. By highway or passageway.
- C. By waters.

Building lines, see Buildings.

I. Of Dominion, province or municipality.

(§ I—3)—HARBOUR BOUNDARIES—POWER TO FIX.

The Harbour Commissioners of Montreal have, by the Act of 1894, 57-58 Vict., ch. 48, the right themselves to fix the boundaries of their properties, saving to the adjoining owners their recourse by action for rectification of the boundaries.

Chars Urbains v. Commissaires du Havre, 24 Que. K.B. 503.

II. Of private property.

A. IN GENERAL; RULES FOR FIXING.

(§ II A—5) — CONVENTIONAL LINE — ESTOPPEL.

Whilst land cannot be conveyed by parol, a conventional line established by parol agreement between adjoining landowners, and acted upon by the erection of a fence, constitutes an estoppel as to the agreed boundary line, and is binding on the successors in title. [Woodberry v. Gates, 2 Thom. 255; Lawrence v. McDowell, Ber. [442] 283; Perry v. Patterson, 2 Pug. 367; Leask v. Scott, 3 Q.B.D. 382, followed; Grasett v. Carter, 10 Can. S.C.R. 105, considered.]

Jollymore v. Acker, 24 D.L.R. 503, 49 N.S.R. 148.

(§ II A—5) — CONVENTIONAL LINE — EFFECT ON SUCCESSORS IN TITLE.

A division line agreed upon and occupied as a common boundary by adjoining occupants of land, fully cognizant of the dispute as to the location of the line dividing their properties, is binding upon their successors in title regardless whether it be the true boundary line or not.

Phillips v. Montgomery, 25 D.L.R. 499, 43 N.B.R. 499.

(§ II A—5)—MODE OF LOCATION—REFERENCE TO SUBSEQUENT GRANTS.

For the purpose of ascertaining the location of the lines of a Crown grant it is proper to refer to subsequent grants and plans of adjoining lands.

Phillips v. Montgomery, 25 D.L.R. 499, 43 N.B.R. 499.

(§ II A—5)—BORNAGE—LIMITS—CONTENTS OF LOTS.

Where in an action en bornage the documents of title filed indicate the precise limits, regard should be had to these limits rather than to the contents. (See arts. 504, 504a, C.C. Que.)

Boivin v. Chicoutimi Water & Electric Co., 25 D.L.R. 361, 24 Que. K.B. 394.

(§ II A—5)—BORNAGE—WHO ENTITLED TO.

One who has a real right in land bordering

on other lands is entitled to a bornage even when he is not the owner.

Chars Urbains v. Commissaires du Havre, 24 Que. K.B. 503.

(§ II A—5)—BORNAGE—POSSESSION AS TITLE—ERROR IN DESCRIPTION—AMENDMENT.

Possession alone is a sufficient title to maintain an action for fixing boundaries. But if the plaintiff files a title containing an error in description he will be permitted to amend the declaration by alleging that his title has been made good.

Morneau v. Bélanger, 47 Que. S.C. 178.

(§ II A—5)—ASCERTAINMENT OF LINE BETWEEN ADJOINING LOTS—EVIDENCE—FINDING OF TRIAL JUDGE—APPEAL—EASEMENT—LIGHT—LIMITATIONS ACT, R.S.O. 1914, CH. 75, SEC. 37—OVERHANGING CORNICE.

Soloway v. Gow, 8 O.W.N. 406.

BREACH.

Of contract generally, see Contracts, IV. Of covenant or condition, see Covenants and Conditions; Mortgage; Lease.

Of warranty, see Sale; Vendor and Purchaser.

BREACH OF PROMISE.

I. IN GENERAL.

II. DEFENCES; WHAT WILL EXCUSE BREACH.

I. In general.

(See previous Annual Digests.)

II. Defences; what will excuse breach.

(§ II—5)—RELEASE—INTENTION—ONUS.

The releasing of the other party from a contract to marry involves an intention on the part of the releasing party to give up whatever rights of action she may have in reference to the engagement, and the onus of establishing such intention is on the defendant in an action for breach of promise of marriage. [Davis v. Bomford, 6 H. & N. 245, distinguished.]

Bellamy v. Robertson, 21 D.L.R. 415, 8 W.W.R. 305, 30 W.L.R. 935.

(§ II—5)—ABANDONMENT OF CONTRACT BY MUTUAL CONSENT—DAMAGES—PROVISIONAL ASSESSMENT.

Orenstein v. Smith, 8 O.W.N. 50.

BRIBERY.

As affecting elections, see Elections.

(§ I—5)—CORRUPT OFFER FOR OFFICIAL INFLUENCE.

To corruptly offer to give a sum of money to a member of the Police Commission appointed for a city by its municipal council from amongst its members, for the purpose of inducing such Commissioner to use his official position to aid in procuring the appointment of a third party as Chief of Police by the Board of Police Commissioners is an indictable offence under sec. 163 of the

Criminal Code. [R. v. Vaughan, 4 Burr. 2494; R. v. Casano, 5 Esp. 231; R. v. Pollman, 2 Camp. 229, referred to.]

Rex v. Hogg, 19 D.L.R. 113, 23 Can. Cr. Cas. 228, 7 S.L.R. 467, 7 W.W.R. 107.

(§ I—5)—REWARD FOR ASSISTANCE TO PROCURE OFFICIAL POSITION.

An attempt to improperly procure the appointment of another to the position of Chief of Police for a city by promising a reward to a member of the appointing board for his influence, will not support a charge under sub-sec. (b) of Code sec. 162 making it an indictable offence directly or indirectly to give a reward for the purchase of an appointment to an office or to agree or promise to do so; such facts do not disclose an attempted sale or purchase of an office under sec. 162 (b), but may sustain a count laid for an attempted offence under sec. 163 (b) relating to giving or procuring rewards "for any interest, request or negotiation about any office."

Rex v. Hogg, 19 D.L.R. 113, 23 Can. Cr. Cas. 228, 7 S.L.R. 467, 7 W.W.R. 107.

BRIDGES.

Of highways, see Highway.

As to railways, see Railways; Street Railways.

Injuries to employees on, see Master and Servant.

Liability of municipal corporation, see Highways; Municipal Corporations.

BROKERS.

I. STOCK BROKERS.

II. REAL ESTATE BROKERS.

A. In general; authority and liability of.

B. Compensation; commissions.

III. BUSINESS AND GENERAL BROKERS.

Agency in general, see Principal and Agent.

Insurance agents, see Insurance.

Real estate agent's fraud as affecting agreement for sale of lands, see Vendor and Purchaser.

Annotations.

Real estate brokers; agent's authority: 15 D.L.R. 595.

Real estate agent's commission; sufficiency of services: 4 D.L.R. 531.

I. Stock Brokers.

(§ I—1)—POWER TO AGREE ON CONDITIONAL ACCEPTANCE OF SHARES—PRIVILEGE TO RETURN.

A broker or agent of a joint stock company, who has a mandate to procure subscriptions for shares in the capital stock of the company, cannot accept subscriptions on the understanding that if the subscriber does not wish to take the shares he will not be obliged to pay for them. [Appealed to Privy Council.]

Forget v. Cement Products Co., 24 Que. K.B. 445.

(§ I—2)—MARGINS—RIGHTS AND LIABILITIES.

The broker is protected only in so far as he acts reasonably thereunder, by a clause in bought and sold notes of a grain broker, that he reserves the right in case at any time margins are running out or approaching exhaustion, to close the trades by purchase or sale upon the exchange without calling for additional margins or the giving of further notice.

Nelson v. Baird, 22 D.L.R. 132, 25 Man. L.R. 244, 8 W.W.R. 144, 30 W.L.R. 822.

II. Real Estate Brokers.

A. IN GENERAL; AUTHORITY AND LIABILITY OF.

(§ II A—5)—LISTED LANDS—AUTHORITY TO SELL.

Where a principal has merely instructed a broker to place lands on his list of properties for sale, such "listing" does not of itself constitute an authorization to the broker to enter into a contract for the sale of the lands on behalf of his principal. [Peacock v. Wilkinson, 18 D.L.R. 418, 7 S.L.R. 259, affirmed.]

Peacock v. Wilkinson, 23 D.L.R. 197, 51 Can. S.C.R. 319, 8 W.W.R. 600.

(§ II A—5)—PROOF OF EMPLOYMENT.

A mandate to sell property given to a real estate agent cannot be proved by witnesses. Although oral evidence may be admissible to establish that the immovable was for sale and that the agent had found a purchaser to whom he had sold it, these facts alone are not sufficient to entitle him to a commission. He should prove that his services were retained by the owner to effect the sale.

Dudemaine v. Pelletier, 47 Que. S.C. 154.

(§ II A—5)—CANCELLATION OF AUTHORITY.

Where a broker is given charge of the sale separately of a number of lots and is to receive a percentage on the net profits on the total sales, he would not be subject to dismissal, after having started on his work until it was completed, except for cause; but if the broker neglects the work of selling where it was a part of the arrangement that he should give his personal attention to the business, the property owner may cancel his authority. [Gier v. Van Aalst, 16 D.L.R. 870, affirmed.]

Gier v. Van Aalst, 22 D.L.R. 438.

B. COMPENSATION; COMMISSIONS.

(§ II B 1—10)—CUSTOMARY COMMISSIONS.

In ordinary business transactions where the parties have not settled the salary (remuneration) of the mandatory, the salary, under Quebec law, depends upon the usage of the place where the transaction took place or upon the equitable determination of the Judge.

Wright v. The King, 22 D.L.R. 269, 15 Can. Ex. 203.

(§ II B 1—10)—MODIFICATION OF TERMS BY VENDOR—EFFECT.

The subsequent alteration, by mutual

agreement of the vendor and purchaser, of the terms of payment set forth in their agreement of sale of a leasehold interest in lands, will not deprive the real estate agent who made the sale under vendor's authority, of his right to remuneration or postpone the date of payment of same. [Burchell v. Gowrie, [1910] A.C. 614, referred to.]

Chalmers v. Campbell, 21 D.L.R. 635, 8 W.W.R. 27, 30 W.L.R. 836.

(§ II B 1—10)—DEFAULT OF PURCHASER.

In the absence of any stipulation to the contrary, a real estate agent is entitled to his commission although the vendor has taken back the property and forfeited the purchaser's rights under the contract of sale for default in paying the second instalment of purchase money. [McCallum v. Russell, 2 S.L.R. 444, followed.]

Rothsay Park Co. v. Montgomery Bros., 22 D.L.R. 677, 8 W.W.R. 205, 31 W.L.R. 8.

(§ II B 1—10)—AUTHORITY OF SOLICITOR TO EMPLOY AGENT—LIABILITY OF PRINCIPAL—MISTAKE.

A solicitor, with whom land is placed for sale, has no implied authority to employ a broker to effect the sale, and, if acting under the solicitor's directions, the principal is led to sign a contract of sale containing a promise by the principal to pay the broker his commissions on the sale, without having his attention directed to it, the principal will not be bound by such promise. [Foster v. MacKinnon, L.R. 4 C.P. 704; Lewis v. Clay, 67 L.J.Q.B. 224; Carlisle, &c., Co. v. Bragg, [1911] 1 K.B. 489, followed.]

Rose v. Mahoney, 24 D.L.R. 326, 34 O.L.R. 238, 8 O.W.N. 547.

(§ II B 1—10) — OPTIONS — SUFFICIENCY OF ACCEPTANCE.

A document, which states that an owner sells his property to a real estate agent on the conditions mentioned in it and ends by a promise to pay to the agent a commission of 5% upon the price of sale which he, the vendor, will accept, is not a sale in view of non-acceptance by the purchaser as the delivery of this document to the real estate agent cannot be considered a sufficient acceptance. In any case the agent can claim from the owner his commission for having found a purchaser on the vendor's conditions only by tendering the portion of the price of sale payable in cash.

Langevin v. Duval, 47 Que. S.C. 511.

(§ II B 1—10)—AGENT PROCURING OPTION—SALE TO ANOTHER.

Although a person who instructs a real estate agent to sell his property is obliged to pay him the usual commission even without a provision therefor if the agent succeeds in finding a purchaser, such commission is not due when the agent obtains an option for some days at a fixed price without commission and after the expiration of the time the owner sells to another purchaser even introduced by the agent. The reason is that in

such case the owner never employed the agent to sell his immovable.

Pesant v. Garrett, 24 Que. K.B. 335.

(§ II B 1—11)—AGENT ACTING FOR BOTH PARTIES.

The general rule is that a real estate agent cannot at the same time represent the vendor and the purchaser, but there are exceptions to this principle. Thus when a party gives a mandate to a person whom he knows to be agent of the party with whom he may enter into a contract, he cannot afterwards raise the objection that this agent is unable to act for both of them. The real estate agent is entitled to his commission even when there has been no sale if it failed from the fact that the property to have been sold was not in a condition provided for by the parties, so much so that either of them may properly refuse to carry out the agreement, for instance, in the case of the sale of a licensed hotel if the transfer of the license cannot be obtained.

Lamarre v. Clairmont, 48 Que. S.C. 461.

(§ II B 1—12)—EXCHANGE OF LANDS—SUFFICIENCY OF SERVICES.

A real estate broker negotiating an exchange of lands for his customer is in no better position to claim that he procured a party ready, able and willing to exchange on the authorized terms than he would have been if the sale had been for a fixed price which the purchaser was unable to pay, if the proposed exchange fell through because the other party to it was not able to give what he had agreed to give in exchange for the property of such customer, nor was any exchange effected or finally agreed upon by the document which the defendant signed.

Business Brokers v. Diner, 22 D.L.R. 305, 25 Man. L.R. 471, 31 W.L.R. 455.

(§ II B 1—12)—SUFFICIENCY OF SERVICE—CANCELLED SALES.

A stipulation in an agreement authorising an agent to retain the commissions owing and due him of each sale out of the instalments collected from the purchaser, but that he was to collect the various instalments without further charge, entitles the agent to his full commissions on each sale approved by the principal, notwithstanding its subsequent cancellation in consequence of the default of the purchaser in the payment of instalments.

Powell v. Montgomery, 23 D.L.R. 213, 8 S.L.R. 224, 31 W.L.R. 759.

(§ II B 1—12)—SUFFICIENCY OF AGENT'S SERVICES—FINDING PURCHASER SUITABLE TO VENDOR.

There is no necessity for a mise en demeure when it is impossible for the debtor to fulfil his obligations, but the creditor should not content himself with proving this fact, but should also establish that he himself is in a position to fulfil his own obligations. Thus, a real estate agent who sues for his commission, without mise en demeure, alleging that the owner had himself sold his immovable

to the prejudice of his rights as agent, should prove that the purchaser he had found was ready to purchase upon the conditions imposed by the vendor. In order that an owner whose immovable is sold by an agent should be bound to the purchaser produced by the latter it is necessary that the acceptance of such purchaser should conform to the terms of sale.

Cyr v. Lecours, 47 Que. S.C. 86.

(§ II B 1—12)—**SALE BY ANOTHER AGENT.**

In a contract between an owner and a real estate agent, it was stipulated that if the property is sold after the delay granted to effectuate a sale to a party with whom the agent was in negotiation, he shall be entitled to a commission of 2½%. After the expiry of the delay, the property was sold through another agent. It was proved that the first agent had dealings with the same buyer before the delay had expired, but that he had abandoned them. Under these circumstances the agent was not entitled to his commission.

Browne v. Major Manuf. Co., 24 Que. K.B. 270.

(§ II B 1—12)—**WHEN RIGHT TO COMPENSATION ACCRUES — PURCHASER SIGNING DEED.**

To be entitled to claim his commission on the sale of an immovable the agent who claims to have found a purchaser should prove that the latter has signed the deed of sale and made a tender of the price within the delays agreed upon. If this is not proved and the sale has not taken place the agent is not entitled to his commission.

Hoffman v. Desaulniers, 48 Que. S.C. 15.

(§ II B 1—12)—**SALE AT LOWER PRICE.**

When it is agreed that a real estate agent shall receive a commission if he sells a property at a price named he is not entitled to his commission if it is sold at a lower price.

Jacques v. Léonard, 47 Que. S.C. 344.

(§ II B 1—12)—**AGENT'S COMMISSION ON SALE OF LAND AND BUSINESS—PURCHASER FOUND BY AGENT AND AGREEMENT SIGNED — PARTIES NOT AD IDEM—SALE NOT COMPLETED—PAYMENT OF DEPOSIT BY PROPOSED PURCHASER TO AGENT—RIGHT OF PRINCIPAL TO RECOVER FROM AGENT—COUNTERCLAIM.**

Moody v. Murray, 8 O.W.N. 138.

(§ II B 1—13)—**ABANDONMENT OF SALE BY AGENT—SUBSEQUENT SALE BY PRINCIPAL.**

A real estate agent who receives in advance a note for a sum of money representing his commission, in case of sale of an immovable within a certain delay conformably to the contents of a written contract between him and the owner, but who delivers up the note and the written contract to the owner, abandons thereby his commission and is unable to claim it, if later the owner himself sells his property.

Brunet v. Caron, 47 Que. S.C. 244.

(§ II B 1—13a)—**SUBDIVISION LANDS—SALE EN BLOC BY PRINCIPAL—RIGHTS OF AGENT.**

Where an agency agreement stipulates that the agent is to receive his commissions from the sales of all lands within a subdivision, whether sold by the agent, the owner, or any other person, a transfer of the unsold residue of the subdivision en bloc by the owner in consideration of shares of stock, though constituting a sale, is not such a sale as contemplated in the agreement to entitle the agent to the stipulated commissions, but the remedy of the agent is to damages for breach of an implied obligation on the part of the principal to do nothing to prevent the agent from earning his commissions. [*Burchell v. Gowrie & Co.*, [1910] A.C. 614; *Inchbald v. Western etc. Co.*, 34 L.J.C.P. 15, followed; *Kennerley v. Hextall*, 18 D.L.R. 375, 7 A.L.R. 469, varied.]

Kennerley v. Hextall, 24 D.L.R. 418, 31 W.L.R. 558, 8 W.W.R. 922, 8 A.L.R. 500.

(§ II B 1—13a)—**AUTHORITY TO SELL IN LOTS — SALE EN BLOC.**

Owners of land divided into building lots, who instruct a real estate agent to sell their lots, can be sued after the sale of the land by a partnership of which the agent is a member, the sale being carried out by the partnership to the knowledge of the owner. Although the land was to be sold in lots as subdivided, the agent has a right to the usual commission if the owners by his intervention have sold them en bloc.

Bousquet v. Mignault, 48 Que. S.C. 5.

(§ II B 1—14a)—**AGENT TAKING OPTION TO HIMSELF.**

A real estate agent who obtains from an owner an option for the purchase of property and at the same time the promise of a commission of \$500 if he should effect the sale of the immovable, cannot claim the commission if he himself purchases under the option. The owner who admits having promised a commission to a real estate agent for the sale of his property, but who maintains at the same time that the latter renounced it, makes an admission which is indivisible.

Lecours v. Dagenais, 47 Que. S.C. 1.

(§ II B 2—16)—**FAILURE TO COMPLETE TRANSACTION — LEASE BY PRINCIPAL PREVENTING.**

Where a real estate broker's claim for commission is based upon his having procured a purchaser ready, willing and able to carry out the deal upon the terms specified, and that the vendor himself made a lease which prevented the carrying out of the proposed sale, the broker must shew that, had it not been for the lease, the proposed purchaser was ready and willing to carry out the deal on the terms upon which the property was listed.

Dumphy v. Cariboo Trading Co., 22 D.L.R. 658, 8 W.W.R. 716.

(§ II B 2—16)—**FAILURE TO COMPLETE TRANSACTION—DEFAULT OF PRINCIPAL.**

If an owner gives to a real estate agent

the following mandate: "I, the undersigned, undertake to pay a commission of 2½% to Jarry & Jarry for a property situated on Daniel Street at the corner of Boyer, if this property is sold by their intervention," and the agent finds, on the conditions agreed upon, a purchaser whom the principal refuses, and the latter subsequently by intervention of another agent sells this property to the same purchaser on the same conditions, he should pay to his first agent the commission agreed upon in the written contract.

Jarry v. Baril, 48 Que. S.C. 475.

(§ II B 2—16)—FAILURE TO COMPLETE TRANSACTION—DEFAULT OF PRINCIPAL.

Real estate agents were to receive a commission of \$1,000 from the purchaser for the purchase of land at the price of \$40,000. The sale fell through by the default of the purchaser, but the latter obtained by the intervention of the same agents two-fifths of the property, which was sold for \$9,000. The agents claimed \$300 as commission for the value of their services. It was decided that they had a right to the commission claimed against the purchaser.

Shipman v. Pélouquin, 48 Que. S.C. 492.

(§ II B 2—16)—FAILURE TO COMPLETE TRANSACTION—DEFAULT OF PRINCIPAL.

A vendor, who is the cause of a sale falling through, is obliged to pay the commission to the real estate agent that he employed. If it is agreed that he would transfer to him an hypothecary debt in payment of his commission and he is unable to do so, he will be obliged to pay it in money.

Roch v. Joron, 48 Que. S.C. 39.

III. Business and general brokers.

(See previous Annual Digests.)

BUILDERS' LIEN.

See Mechanics' Liens.

BUILDING CONTRACTS.

Construction of, see Contracts, II; Architects.

As to mechanics' liens on building, see Mechanics' Liens.

BUILDINGS.

I. STATUTORY AND MUNICIPAL REGULATIONS.

A. In general.

B. Fire escapes.

II. PRIVATE RIGHTS.

As to building contracts, see Contracts, II.

Restrictions as to, in covenant, see Covenants and Conditions.

Lien on, see Mechanics' Lien.

Negligence as resulting from condition of, see Negligence; Master and Servant.

As to walls, see Party Walls.

Boundaries of, see Boundaries.

Annotations.

Municipal regulations of building permits: 7 D.L.R. 422.

Restrictions in contract of sale as to the user of land: 7 D.L.R. 614.

I. Statutory and municipal regulations.

A. IN GENERAL.

(§ I A—7)—BUILDING PERMITS—STATUTORY BUILDING LINE—FRONT STEPS.

The steps, as a means of access to the front of a building extending out across the prescribed building line but the building itself being within the prescribed line, is not within the prohibition of a municipal by-law authorized by sec. 406, sub-sec. 10, of the Municipal Act, R.S.O. 1914, ch. 192, prohibiting the placing of a building on a residential street nearer to the street line than a certain prescribed distance, as to disentitle one to a building permit. [Paddington Corporation v. Attorney-General, [1906] A.C. 1, specially referred to.]

Re Masonic Temple Co. & City of Toronto, 22 D.L.R. 458, 33 O.L.R. 497, 8 O.W.N. 226.

(§ I A—7)—BY-LAW—PERMIT FOR BUILDING—ANTICIPATED USE OF BUILDING IN BREACH OF POLICE COMMISSIONERS' BY-LAW—NUISANCE—RISK OF OWNER—ACTION TO RESTRAIN ISSUE OF PERMIT—STATUS OF PLAINTIFF AS RATEPAYER AND ADJOINING OWNER—JUDGMENT—RESERVATION OF RIGHTS AS TO FUTURE PROCEEDINGS.

Mackenzie v. City of Toronto, 7 O.W.N. 820.

B. FIRE ESCAPES.

(§ I B—11)—DEATH BY FIRE—PROXIMATE CAUSE.

A mere non-compliance with the Factory Shop and Office Building Act, 3 & 4 Geo. V. ch. 60 (R.S.O. ch. 229), in not providing fire-escapes and the non-separation of combustible or inflammable material, does not entitle the personal representatives or dependants to recover for the death of a person who lost his life in a building when it was burnt, where the evidence fails to establish that the non-compliance with the statutory provisions was the immediate cause resulting in the person's death.

Birch v. Stephenson; McDougall v. Stephenson, 22 D.L.R. 404, 33 O.L.R. 427, 8 O.W.N. 159.

II. Private rights.

(§ II—15)—ENCROACHMENT OF BUILDING UPON CITY STREET—FAILURE TO PROVE BOUNDARY OF STREET—EVIDENCE—PLANS AND SURVEYS.

Toronto v. Pilkington Brothers, 7 O.W.N. 806, 8 O.W.N. 486.

BULK SALES.

See Sale, IV.

BURDEN OF PROOF.

Instruction as to, see Trial.
In general, see Evidence, II.

BY-LAWS.

Of associations, see Associations; Benevolent Societies; Religious Societies; Charities.
Of corporations, see Corporations and Companies.
Of municipality, see Municipal Corporations.

CALLS.

Calls (locative), see Boundaries.
On stock, see Corporations and Companies.

CAMERA.

For order of hearing in camera, see Trial.

CANADA TEMPERANCE ACT.

See Intoxicating Liquors.

CANALS.

See Waters; Harbours.

CANCELLATION OF INSTRUMENTS.

Of contracts generally, see Contracts, V.
Cancellation of subscription to corporate stock, see Corporations and Companies.
Of deed, see Deed.
Revocation of will, see Wills.
Of contract of sale, see Vendor and Purchaser.
Of instruments under Land Titles Acts, see Land Titles.

Annotations.

Rescission of contract for fraud or misrepresentation: 21 D.L.R. 329.
Cancellation of share subscription for fraud or misrepresentation: 21 D.L.R. 103.

(§ I—5)—WHEN REMEDY REFUSED—INSTRUMENT NOT NEGOTIABLE.

An action to have a valid instrument, not negotiable, delivered up to be cancelled, does not lie unless there is some real danger of its being used for an improper purpose, to the loss, in some way, of the party seeking its cancellation; and in a case in which there is a possibility that the instrument has not fulfilled all its purposes, there can, even where that danger may exist, be no such right of action. *Brooking v. Maudslay Son & Field*, 38 Ch.D. 636, and *Guaranty Trust Co. of New York v. Hannay & Co.*, [1915] 2 K.B. 536, referred to for the practice of Courts of equity in decreeing cancellation of valid instruments and making declaratory judgments.

Shewfelt v. Kincardine, 35 O.L.R. 39, 9 O.W.N. 237.

CANDIDATES.

See Elections; Officers.

CARNAL OFFENCES.**(§ I—6)—HOUSEHOLDER PERMITTING DEFILEMENT.**

The effect of Cr. Code, sec. 217, in making it an offence for a householder to permit a girl under 18 to be upon the premises for the purpose of illicit intercourse with any man "whether with any particular man or generally," is to exclude from its operation the case of the girl coming to the house for the purpose of illicit intercourse with the householder himself. [*R. v. Sam Sing*, 17 Can. Cr. Cas. 361, 22 O.L.R. 613, followed.]

Rex v. Sam Jon, 24 Can. Cr. Cas. 334, 20 B.C.R. 549.

CARRIERS.**I. WHO ARE COMMON CARRIERS; RELATION TO PUBLIC.****II. CARRIERS OF PASSENGERS AND OTHER PERSONS.**

- A. In general.
- B. Rules and regulations.
- C. Who are passengers.
- D. Abuse of passengers; insulting language, etc.
- E. Assault.
- F. Arrest; false imprisonment.
- G. Measure of care required; negligence generally.
- H. Ejection of passenger or trespasser.
- I. Leaving at destination; stopover.
- J. Disabled or incompetent passengers.
- K. Getting on or off.
- L. Safety of stations, approaches, and platforms.
- M. Tickets; conditions; fares.
- N. Blackboard announcements as to trains; time-tables.
- O. Baggage or property of passenger.
- P. Corpse.
- Q. Connecting carriers.

III. CARRIERS OF FREIGHT.

- A. In general; powers of agents.
- B. Duty to receive and transport.
- C. Loss of, or injury to, property.
- D. Delivery by carrier; delay.
- E. Liability and lien for freight charges; rates.
- F. Carrying live stock.
- G. Stipulations as to liability.
- H. Contract or duty to furnish cars.
- I. Demurrage on cars.
- J. Connecting carriers.
- K. Criminal transportation.

IV. GOVERNMENTAL CONTROL; RATES; DISCRIMINATION; DUTY AS TO STOPPING PLACES.

- A. In general.
- B. Compulsory connection and interchange of business; discrimination between carriers, hackmen, etc.; through rates.
- C. Rates; discrimination between passengers or shippers; rebates; passes.
- D. Duty as to depots; stopping trains; duty to run trains.

As to action against railway, independent of carrier liability, see Railways.

Regulation of, see Railway Commission.

I. Who are common carriers; relation to public.

(See previous Annual Digests.)

II. Carriers of passengers and other persons.

A. IN GENERAL.

(§ II A-10)—ADDITIONAL PASSENGER TRAIN SERVICE.

Where the gross earnings per passenger train mile on a passenger train between Lachute and Montreal are not only much below the average return of the whole system, but are also below the average costs of the system, the Board would not be justified in directing that an additional passenger train should be put into service between the same points.

Massiah v. C.P.R. Co., 18 Can. Ry. Cas. 358.

(§ II A-10)—ADDITIONAL PASSENGER SERVICE—UNJUST DISCRIMINATION.

The Board is not justified in directing additional passenger service where the passenger train mile earnings would be one-half of the passenger train mile cost of operation in the absence of any evidence of similarity of conditions and of affirmative evidence that the difference in passenger-train service has resulted that persons and localities located on one section of railway have profited at the expense of those on another section so as to shew unjust discrimination. [Toronto and Brampton v. G.T. and C.P.R. Cos. (Brampton Commutation Rates Case) (No. 2), 11 Can. Ry. Cas. 370, followed.]

Wood v. C.P.R. Co., 18 Can. Ry. Cas. 365.

L. SAFETY OF STATIONS, APPROACHES AND PLATFORMS.

(§ II L 1-240)—CONVENIENT MODE OF DESCENT—NEGLIGENCE.

A tramway company is bound to procure for its passengers a convenient mode of descent, and if it has no station should provide some easy means of descending and indicate to passengers where they should descend, and the negligence of the passenger does not excuse the torts of the carrier.

Montreal Street R. Co. v. Chevandier, 24 D.L.R. 349, 24 Que. K.B. 48.

(§ II L 1-245)—FAILURE TO PLACE TRAIN ON SIDING AT ARRIVAL—COLLISION.

There is gross negligence on the part of the conductor of a railway company whose train arrives at a station when the conductor knows that another train which should have the right of way would arrive in a few moments, if the train remains from 8 to 10 minutes in the station in order to receive his instructions without giving any order to have the train placed safely upon a siding, and in such case the company is liable for the damages caused by a collision.

Grand Trunk R. Co. v. Brassard, 47 Que. S.C. 369.

M. TICKETS; CONDITIONS; FARES.

(§ II M 1-273)—CONDITIONS AND LIMITATIONS—BAGGAGE.

A condition stated on a passage ticket for transportation upon a boat whereby the transportation company was not to be liable for injury to the passenger or baggage, (inter alia) from perils of the sea or defects in the boat fittings, where reasonable means had been used to send the boat to sea in a seaworthy state, will bind the passenger where the latter had ample opportunity to read the ticket and to get notice therefrom and from the posted notices of the limitation of liability if the company did all that was reasonably required to bring the conditions to the attention of prospective passengers.

Dill v. G.T.P. Coast S.S. Co., 21 D.L.R. 392, 21 B.C.R. 182.

N. BLACKBOARD ANNOUNCEMENTS AS TO TRAINS; TIME-TABLES.

(§ II N-320)—TIME-TABLE—CHANGES IN—PUBLIC CONVENIENCE.

Public convenience does not demand the restoration of a former time-table, where the railway company has justified the change in it by shewing that the early mail arrives at the point in question, as usual, early in the morning; and its trains by leaving the point of departure, later, in the morning, serve the convenience of the travelling public by enabling them to make close connections from various points with the later morning trains.

Picton Board of Trade v. C.N.O.R. Co., 18 Can. Ry. Cas. 363.

O. BAGGAGE OR PROPERTY OF PASSENGER.

(§ II O 2-340)—SKIFFS, CANOES AND ROWBOATS—LIMITATION OF LIABILITY—WAREHOUSEMAN.

Canoes, skiffs and rowboats are not such articles of necessity or personal convenience as are usually carried by passengers for their personal use so as to be "baggage." [Macrae v. G.W.R. Co., L.R. 6 Q.B. 612, considered.] The construction of the words, "owner's risk," used in r. 12 (Baggage Rules) is a matter for decision by the Courts. The Board has power under sec. 340 of the Railway Act (Canada) to sanction the limitation of the carrier's liability to \$100 in the case of baggage checked free of charge, and the limitation is a reasonable one. The Board is not given any jurisdiction under sec. 340 of the Railway Act to limit the carrier's liability as a warehouseman. [Rule 2, secs. (c), 11 and 26 (c) of the Baggage Rules also considered. Section 283 of the Railway Act (Canada) considered.]

Re Baggage Car Traffic Rules, 33 W.L.R. 54.

III. Carriers of freight.

A. IN GENERAL; POWERS OF AGENTS.

(§ III A-370)—AUTHORITY TO SIGN BILLS OF LADING—ESTOPPEL FROM DISPUTING.

It is not open to a railway company which has actually received grain for transportation to dispute the bill of lading or shipping bill issued on its regular form merely on the ground that its agent had not by reason of some inside regulations between the company and its servants the power to sign the bill, where the company received and carried the grain, collected the freight and made delivery pursuant to its terms. [Erb v. G.W.R. Co., 5 Can. S.C.R. 179; Oliver v. G.W.R. Co., 28 U.C.C.P. 143, distinguished.]

Randall, Gee & Mitchell v. C.N.R. Co., 21 D.L.R. 457, 25 Man. L.R. 293, 8 W.W.R. 413.

C. LOSS OF, OR INJURY TO, PROPERTY.

(§ III C-386)—SHIPMENT OF GRAIN—LOSS BY FIRE IN ELEVATOR—INSURANCE—MARINE POLICY—NEGLIGENCE OF CARRIERS—EVIDENCE—DAMAGES—FINDINGS OF TRIAL JUDGE—APPEAL—NEW TRIAL.

Richardson v. C.P.R. Co., 8 O.W.N. 221.

(§ III C-388b)—SHIPMENT OF FLAX—LOSS IN TRANSIT—PRESUMPTION AS TO NEGLIGENCE.

Where the bill of lading called for "eleven hundred bushels more or less" of flax and the evidence proved the delivery of over 900 bushels in a carload lot, the onus is upon the railway company to account for the deficiency on the car arriving at destination with only half the quantity stated in the bill; where no satisfactory explanation of the loss is given by the railway, negligence may be presumed against it. [Ferris v. C.N.R. Co., 15 Man. L.R. 134, referred to.]

Randall, Gee & Mitchell v. C.N.R. Co., 21 D.L.R. 457, 25 Man. L.R. 293, 8 W.W.R. 413.

(§ III C-392)—LIABILITY AS WAREHOUSEMAN—GOODS IN CAR ON SIDING—DEGREE OF CARE.

A railway company is in the position of a warehouseman in respect of a carload lot in bond held on a siding after arrival at destination where the holding of the car is subject to demurrage charges until the consignee shall remove the contents; the onus is upon the railway to shew affirmatively that it had exercised reasonable care in an action for non-delivery of the goods which were lost from the car while under demurrage and had probably been stolen.

Great West Supply Co. v. G.T.P.R. Co., 23 D.L.R. 780, 8 A.L.R. 478, 8 W.W.R. 720, 31 W.L.R. 259.

D. DELIVERY BY CARRIER; DELAY.

(§ III D 1-395)—BILL OF LADING—CONDITION—DELIVERY OF GOODS SHIPPED ON PAYMENT OF DRAFT—DELIVERY WITHOUT

PAYMENT—ACTION BY VENDORS AGAINST CARRIERS—DAMAGES—THIRD PARTY—COSTS.

Reo Sales Co. v. G.T.R. Co., 8 O.W.N. 482.

(§ III D 2-400)—ONUS OF PROVING DELIVERY.

The onus of proving a valid delivery of the goods under a bill of lading, by which they were consigned to the consignors or their assigns, is upon the railway company which received the goods for the last portion of the transportation from the preceding carrier.

Wolsely Tool and Motor Car Co. v. Jackson Potts & Co., 21 D.L.R. 610, 33 O.L.R. 96, 7 O.W.N. 617.

[Affirmed in 33 O.L.R. 587.]

E. LIABILITY AND LIEN FOR FREIGHT CHARGES; RATES.

(§ III E-425)—TRANSPORTATION OF FEED—FREIGHT AND EXPRESS CHARGES.

Two transportation companies entered into a contract whereby the one agreed to carry for the other "mail and express" upon certain terms. Feed (hay and oats) was offered for carriage under the contract "as express," but the carrier refused to accept delivery as "express," and carried it as "freight." It appeared from the evidence that both parties had been engaged in the transportation business within the area in question for some years and were familiar with the custom and usages established, and that it had always been the custom to carry feed as freight. In an action for freight charges for the feed carried by the plaintiff for the defendant:—Held, that the parties knew that it was the custom to carry feed (hay and oats) as freight, and that it was in their minds when they entered into the contract.

B.C. Express Co. v. Inland Express Co., 21 B.C.R. 178.

F. CARRYING LIVE STOCK.

(§ III F-430)—SHIPMENT OF FOXES—LIMITATION OF LIABILITY.

Several boxes of foxes were shipped under a contract containing a clause providing that in case of carload shipments, if the owner or attendant travel, accompanying the animals, free transportation will be furnished the attendant, and the animals during transportation in charge of the attendant will be at owner's risk. On the back of the contract was an attendant's contract, signed by the shipper, providing that if free transportation was furnished by the company it would not be liable for any injury or loss occurring to the owner or attendant. One of the owners travelled on the same train as the foxes, but not in the same car, the foxes being in the express car with the other express parcels. No free transportation was furnished:—Held, that the attendant's contract only applied in case of carload shipments, and the

trial Judge was right in directing the jury that it did not apply to the shipment in question, and the company was liable if the foxes died during transportation through its negligence.

Trenholm v. Dominion Express, 43 N.B.R. 98.

(§ III F-439)—INJURY CAUSING DEATH TO PERSON IN CHARGE—CONTRACT LIMITING LIABILITY.

A railway company is liable in damages for the death of a person caused by the negligence of the company's employees, notwithstanding that the party killed was in charge of live stock and was being carried on a free pass and had signed a contract releasing the company from all liability, where the party signing could not read or write, and could not have known the nature of the conditions signed, and the company had not done what was reasonably sufficient to give him notice of the conditions.

Canadian Pacific R. Co. v. Parent, 21 D.L.R. 681, 51 Can. S.C.R. 234, 19 Can. Ry. Cas. 1.

G. STIPULATIONS AS TO LIABILITY.

(§ III G 1-440)—"AT OWNER'S RISK."

Where the carrying of goods is stipulated in the bill of lading to be "at owner's risk," this does not have the effect of excusing a common carrier from its liability for damages caused by its fault, or the fault of those for whom it is responsible.

Ottawa Forwarding Co. v. Ward, 23 D.L.R. 645, 47 Que. S.C. 171.

(§ III G 1-441)—LIABILITY TO CARETAKER OF STOCK—REDUCED FARE.

One who travels upon a railway in charge of live stock at a reduced fare paid by the shipper of the stock under a special contract between the shipper and the railway company, and pays no fare himself, and has no other ticket or other authorization entitling him to be upon the train, cannot be heard to deny that he is travelling under the provisions of the special contract, though he has neither read nor signed it, and is bound by a provision therein relieving the railway company from liability for his death or injury, though caused by the negligence of the company. [*Robinson v. G.T.R. Co.*, 12 D.L.R. 696, 47 Can. S.C.R. 622, reversed.]

Grand Trunk R. Co. v. Robinson, 22 D.L.R. 1, [1915] A.C. 740, 113 L.T. 350, 31 W.L.R. 241, 19 Can. Ry. Cas. 37.

(§ III G 2-450)—IMMUNITY AS TO NEGLIGENCE OF SHIP'S CREW—PUBLIC POLICY.

Although the Court should accept the decision of the Supreme Court in the case of *Glengoil S.S. Co. v. Pilkington*, 28 Can. S.C.R. 146, namely, that a condition in a bill of lading to the effect that the owner of a ship will not be responsible for the negligence of the master or other employees, or for the equipment, is not contrary to public order nor to the laws of the province of Quebec, nevertheless this principle, which is not in

accord with the general jurisprudence of our Courts, should not be extended. Thus, this clause for immunity should be strictly interpreted and should not be applied when there is no proof of the manner in which damage was caused to the goods carried.

Dechêne v. C.P.R. Co., 47 Que. S.C. 431.

(§ III G 4-460)—STIPULATION AS TO NOTICE OF LOSS—FAILURE TO GIVE.

A bill of lading, approved by the Railway Board, containing a clause releasing the carrier from liability if notice of the loss is not given within four months of a reasonable time for delivery, is binding upon the shipper and will bar his right of recovery for a lost shipment where the required notice is not in fact given.

Drury v. C.P.R. Co., 48 Que. S.C. 326.

H. CONTRACT OR DUTY TO FURNISH CARS.

(§ III H-470)—DUTY TO FURNISH HEATED CARS—PERISHABLE COMMODITIES—RECOVERY BACK OF FREIGHT TOLLS.

The carrier should be obliged to accept shipments of perishable commodities providing heated cars, subject to the stipulation that the shipper must sign a release waiving all claim for frost damage unless he can prove that the heating appliances were missing, with a further exception that if the heaters are allowed to go out through the negligence of the carrier, the damages recoverable will be limited to one-half the freight tolls charged on the shipment in question.

Fernie-Fort Steele Brewing Co. v. C.P.R. Co., 18 Can. Ry. Cas. 426.

IV. Governmental control; rates; discrimination; duty as to stopping places.

A. IN GENERAL.

(§ IV A-515)—DUTY AS TO MILLING-IN-TRANSIT—UNJUST DISCRIMINATION.

Shippers are not entitled to a milling-in-transit privilege as a matter of right, and its allowance in the public interest by carriers to shippers in one section must be without unjust discrimination to shippers in another section served by its line. [*Koch v. Pennsylvania R. Co.*, 10 I.C.C.R. 675; *Ontario & Manitoba Flour Mills v. C.P.R. Co.*, 16 Can. Ry. Cas. 430, followed.]

Sudbury Brewing & Malting Co. v. C.P.R. Co., 18 Can. Ry. Cas. 410.

(§ IV A-515)—PRIVILEGE OF MILLING-IN-TRANSIT—RIGHTS OF BREWERIES.

No instance can be found where a milling-in-transit privilege on the by-product has been granted, apart altogether from the main product. The offer, therefore, of a brewing company is not entitled to a milling-in-transit privilege on malt grain carried by the respondent on its line from Fort William to Sudbury, and there brewed in the applicant's brewery.

Sudbury Brewing & Malting Co. v. C.P.R. Co., 18 Can. Ry. Cas. 410.

(§ IV A-519)—TARIFFS—MIXED COMMODITIES—HIGHEST MINIMUM WEIGHT.

The provision in the respondent's tariffs, west of Lake Superior, that different commodities may be consolidated into C.L. lots at C.L. tolls, but when these commodities in such mixture take different ratings if shipped separately in straight C.L. lots, the entire mixed lot is charged the highest C.L. tolls and the highest minimum weight; (rule 2 (c)) follows the practically universal rule in freight classification and will not be disturbed by the Board.

B.C. Central Farmers Institutes v. C.P.R. Co., 21 D.L.R. 649, 17 Can. Ry. Cas. 431.

(§ IV A-519)—LOWER TOLLS—COMPETITION—DISSIMILAR CONDITIONS.

The general scope of sec. 315 makes it clear that the Board is empowered to recognize the existence of competition and its effects, therefore, when it is satisfied that such competition exists, it may allow a lower toll on the section of railway where the dissimilar circumstances and conditions created by such competitions exist. [Malkin & Sons v. G.T.R. Co. (Tan Bark Tolls Case), 8 Can. Ry. Cas. 183, at pp. 186, 187; Almonte Knitting Co. v. C.P. and M.C. R. Cos. (Almonte Knitting Co. Case), 3 Can. Ry. Cas. 441, followed. Fredericton Board of Trade v. C.P.R. Co., 17 Can. Ry. Cas. 433, reheard and reversed.]

Fredericton Board of Trade v. C.P.R. Co., 21 D.L.R. 790, 17 Can. Ry. Cas. 439.

(§ IV A-519)—POWER OF BOARD—AUTHORIZATION OF CONTRACT EXEMPTING FROM LIABILITY.

It is within the power of the Railway Board under the provisions of the Railway Act, R.S.C. ch. 37, to authorize a contract relieving the company from liability to one travelling in charge of live stock at a reduced fare, for injuries caused by the negligence of the company or otherwise. [Robinson v. G.T.R. Co., 12 D.L.R. 696, 47 Can. S.C.R. 622, reversed.]

Grand Trunk R. Co. v. Robinson, 22 D.L.R. 1, [1915] A.C. 740, 113 L.T. 350, 31 W.L.R. 241, 19 Can. Ry. Cas. 37.

B. COMPULSORY CONNECTION AND INTERCHANGE OF BUSINESS; DISCRIMINATION BETWEEN CARRIERS, HACKMEN, ETC.; THROUGH RATES.

(§ IV B-521)—TRAFFIC FACILITIES—INTERCHANGE TRACK—DOMINION AND PROVINCIAL COMPANIES.

The Board will order, in the public interest, an interchange track for transferring passengers and freight, to be built by a Dominion railway company connecting its line with that of a provincial railway company, upon condition that the provincial company contribute one-third of the expense.

Cumberland Board of Trade v. Esquimalt & Nanaimo R. Co., 18 Can. Ry. Cas. 48.

(§ IV B-522)—CONNECTING CARRIERS—THROUGH TOLLS.

When two connecting carriers are separate legal entities, and the former operates and tariffs the latter as a separate property, the latter is under no obligation to put a construction toll of the former into effect on its line, but the shipper is entitled, on a through bill of lading, to the benefit of the through toll to the point of delivery. [See Wylie Milling Co. v. C.P. & K. & P. R. Cos., 14 Can. Ry. Cas. 5.]

Oliver-Serim Lumber Co. v. C.P. & E. & N.R. Cos., 17 Can. Ry. Cas. 324.

C. RATES; DISCRIMINATION BETWEEN PASSENGERS OR SHIPPERS; REBATES; PASSES.

(§ IV C 1-525)—WHEN REDUCTION OF TOLLS REFUSED—CONNECTING CARRIERS.

The Board refused to reduce the tolls on the respondent power company's line, on account of its extraordinary operating conditions, but made a reduction in the respondent railway company's toll by following the practice in Eastern Canada, where connecting carriers having no joint tolls, each takes one cent from its local toll, subject to a minimum net toll. [Fullerton Lumber & Shingle Co. v. C.P.R. Co., 17 Can. Ry. Cas. 282, distinguished.]

Stoltze Manuf. Co. v. C.P.R. & Western Canada Power Cos., 17 Can. Ry. Cas. 282.

(§ IV C 1-525) — TOLLS ON LUMBER — PRAIRIE DESTINATIONS.

The tolls on lumber from Golden, on the main line of the Canadian Pacific Railway, to prairie destinations, should be put on a parity with the tolls from corresponding points on the Crow's Nest Branch to the same destinations via the same common point.

Mountain Lumber Manuf. Ass'n v. C.P.R. Co., 17 Can. Ry. Cas. 285.

(§ IV C 1-528)—UNFAIR OR EXCESSIVE TOLLS—UNREMNERATIVE TOLLS.

The Board cannot order railway companies to put in an unremunerative toll so low as to be unfairly out of line with tolls which are necessary to be maintained in order to permit the continuance of satisfactory operation of railways, due regard being had to proper consideration of the value of the commodities shipped and the services performed, it cannot take into account matters of business policy and railway administration, but can only inquire whether tolls are excessive or unfair.

Western Ontario Munic. v. G.T., M.C. & P.M. R. Cos., 18 Can. Ry. Cas. 329.

(§ IV C 1-528)—CARRYING SHIPMENT OVER ROUTE AT HIGHER TOLL—LIABILITY FOR OVERCHARGE.

A shipment of household goods, originating at Kingsville, consigned to Bridgeburg, Ontario, was delivered by the Windsor, Essex & Lake Shore Rapid R. Co., to the Canadian Pacific R. Co. at Lake Shore Junction, and by that line delivered to the

Grand Trunk R. Co. at London, the initial carrier, without instructions from the owners, having chosen a route at a higher toll than that available via Michigan Central R. from Lake Shore Junction to Bridgeburg, and being under obligation, in the absence of specific instructions as to the routing of its own lines, to send the goods forward on the lowest toll combination available, should make adjustment accordingly.

Sinclair v. Windsor, Essex & Lake Shore Rapid R. Co., 18 Can. Ry. Cas. 344.

(§ IV C 1—528)—REDUCTION OF TOLLS BY BOARD—FREIGHT TRAFFIC.

The annual statistical returns made by railway companies showing the average revenue per ton per mile of all freight movements, will not justify a reduction by the Board of tolls. In every case the traffic moved must be of sufficient volume and the hauls of sufficient length to insure proper remuneration. Without prejudice to a pending application for increased tolls a flat blanket C.L. toll of 50 cents per ton for any distance up to and including 50 miles on gravel was voluntarily conceded under sec. 341 by railway companies concerned to aid municipalities in Western Ontario in prosecuting the "good roads" movement.

Western Ontario Munic. v. G.T., M.C. & P.E.R. Cos., 18 Can. Ry. Cas. 329.

(§ IV C 3—535)—REASONABLENESS—EQUALIZATION AS TO CONDITIONS.

The Board has no right to attempt to equalize geographical, climatic or economic conditions affecting cost of production, but is only concerned with the reasonableness of the toll which the carrier is seeking to collect for the transportation of a given commodity.

Canadian China Clay Co. v. G.T., C.P. & C.N.R. Cos., 18 Can. Ry. Cas. 347.

(§ IV C 3—536)—SHIPMENT OF CHINA CLAY FROM ENGLAND—THROUGH TOLLS—CONNECTING RAIL CARRIER—EQUALIZATION.

Where china clay from Cornwall, England, for Canadian delivery, moves under through bills of lading at a through toll to the point of destination, any change advancing the rail carriers' import toll representing part of the through movement would result in the Canadian carriers not being able to hold the business in competition with foreign ports and rail carriers quoting a lower through toll, and where the point of production of the Canadian product is from 60 to 80 miles further than Montreal from the majority of the western destinations, and a two-line haul has to be employed as against one, the Board will not make the local joint toll from the point of Canadian production equal to the Montreal import toll to the same points of destination.

Canadian China Clay Co. v. G.T., C.P. & C.N.R. Cos., 18 Can. Ry. Cas. 347.

(§ IV C 4—540)—SEASONED AND UNSEASONED WOOD—UNITY OF WEIGHT—UNJUST DISCRIMINATION.

Railway companies are not obliged to

equalize the disadvantages of the shippers from the standpoint of the costs of production. The basis of toll making so far as the unit of weight is concerned is 100 lbs., and the tolls vary with the weight. The Board will not require seasoned and unseasoned wood to be carried at the same C.L. toll, irrespective of weight, in order to equalize the disadvantage arising to shippers without capital as compared with shippers having capital. To do so would create unjustly discriminating conditions. [*Canadian Portland Cement Co. v. G.T. and Bay of Quinte R. Cos.*, 9 Can. Ry. Cas. 211; *Blaugas Co. v. Can. Freight Assoc.*, 12 Can. Ry. Cas. 303, 304; *British Columbia News Co. v. Express Traffic Assoc.*, 13 Can. Ry. Cas. 176, 178; *Canadian China Clay Co. v. G.T., C.P. and C.N.R. Cos.*, 18 Can. Ry. Cas. 347, followed.]

Roberts v. C.P.R. Co., 18 Can. Ry. Cas. 350.

(§ IV C 4—540) — WHARFAGE TOLLS ON THROUGH SHIPMENTS—UNJUST DISCRIMINATION.

It is not unreasonable that the combined tolls on shipments from the east contracted to Fort William, delivered and stored there, and subsequently shipped west should exceed those charged from the same eastern shipping point to the same western destination, for the trans-shipment of which the carrier must necessarily provide facilities at Fort William, as in the latter case there is but one transaction or contract, whilst in the former there are two; therefore it is not unjust discrimination against Fort William to impose a wharfage toll on shipments to that point and not to exact it on through shipments.

Fort William Board of Trade v. C.P.R. Co., 18 Can. Ry. Cas. 401.

(§ IV C 4—540)—STANDARD FREIGHT MILEAGE TARIFF—MAIN AND BRANCH LINES—UNJUST DISCRIMINATION.

Difference in density of traffic as between main and branch lines does not affect the application of a standard freight mileage tariff; therefore, all points, whether on a main or branch line, within the same mileage group, should be given the same toll, and it is unjust discrimination to make a different toll against one point of the group.

Two Creek Grain Growers' Assoc. v. C.P.R. Co., 18 Can. Ry. Cas. 403.

(§ IV C 4—541)—UNJUST DISCRIMINATION—PASSENGER TOLLS—COMPETITION.

Under sec. 315, unjust discrimination does not exist, where there is actual competition at the initial and terminal points reached by railway lines, and the potential choice of a passenger at an intermediate point whereby he may elect to buy a through ticket for the whole distance between the initial and terminal points, cheaper than one on a mileage basis from such intermediate point to the terminal point, spreads the effect of competitions over the whole journey.

Fredericton Board of Trade v. C.P.R.

Co., 21 D.L.R. 790, 17 Can. Ry. Cas. 439, reversing 17 Can. Ry. Cas. 433.

(§ IV C 4—541) — REDUCTION OF TOLLS — FARMERS ATTENDING AGRICULTURAL CONVENTION—UNJUST DISCRIMINATION.

Under secs. 77, 315, 341, the Board has no jurisdiction to compel a railway company to issue reduced tolls to farmers attending agricultural conventions, or to any other class of the community. It is entirely within the discretion of the carriers whether they will do so or not, and for the Board to do so would be unjust discrimination against other classes of the community.

Roy v. Can. Passenger Assoc'n, 17 Can. Ry. Cas. 320.

(§ IV C 4—541)—COMMUTATION TICKETS — CANCELLATION—STANDARD PASSENGER TOLLS—UNJUST DISCRIMINATION.

For many years the respondent company sold ten-trip tickets between Quebec and St. Catherine station for \$4, and similar tickets to other suburban points. Upon these tickets being cancelled the Board refused an application for their re-establishment. No contract was shewn with any of the applicants who built summer cottages at St. Catherine, that if these were established on the line of the railway they would forever give these ten-trip tickets. It is a well-settled principle that a railway company will not be ordered to establish passenger tolls less than its standard toll unless it can be shewn that an undue or unreasonable preference or advantage has been given to any particular description of traffic or that unjust discrimination has been shewn to exist between different localities under substantially similar circumstances and conditions.

Brown v. Quebec & Lake St. John R. Co., 18 Can. Ry. Cas. 342.

(§ IV C 4—542a)—COMPETITION BY WATER—UNJUST DISCRIMINATION.

Where the underlying principle of competition by water affects the whole toll structure, a point unaffected by such competition is not unjustly discriminated against in not receiving as favourable tolls as points that are affected.

Cowichan Ratepayers Assoc. v. C.P.R. Co., 18 Can. Ry. Cas. 395.

(§ IV C 4—542a)—STORAGE TOLLS—UNJUST DISCRIMINATION—COMPETITION.

The practice of railway companies in granting lower forwarding storage tolls than the local storage tolls is not unjust discrimination, because tolls which otherwise of necessity might be charged on a parity may differ one from the other as a result of competitive conditions.

Port Arthur & Fort William Boards of Trade v. C.P.R. Co., 18 Can. Ry. Cas. 406.

(§ IV C 4—543)—INTERSWITCHING CHARGES —LONG AND SHORT HAUL.

Under the General Interswitching Order No. 4988 (July 4, 1908) (see 7 Can. Ry. Cas. 332), the carrier that has the right or obliga-

tion to perform the interswitching service is entitled to the interswitching toll applicable to any distance within four miles, however short it may be, so long as the toll is not graduated according to distance.

Brampton Milling Co. v. C.P.R. Co., 18 Can. Ry. Cas. 337.

(§ IV C 4—543)—INTERSWITCHING TOLLS — DISTRIBUTION AS TO ZONES.

It is a principle of tariff making to break the toll groups at flag stations or unimportant points as far as practicable. Acting upon this principle the Board refused an application to distribute the zones in respondents' city of Hamilton terminals, within which interswitching tolls of 1 cent and 1¼ cents per 100 lbs. respectively prevailed.

Steel Co. of Canada v. Toronto, Hamilton & Buffalo R. Co., 18 Can. Ry. Cas. 339.

(§ IV C 4—547)—TOLLS ON FREIGHT—SPUR LINE—REBATE.

In sub-sec. 3 of sec. 226 of the Railway Act, Can., the words "tolls charged by the company in respect of the carriage of traffic for the applicant over the spur line" mean the tolls charged for the transportation, on the railway company's line, of goods carried to or from the applicant's premises and not tolls charged for the movement of freight on the spur alone; consequently a railway ordered to build a spur line to an industrial plant under sec. 226 at the expense of the applicant and to move cars over it without additional toll, may be directed by the Railway Commission to rebate to the applicant a fixed sum per car from the tolls on business done with the applicant and carried over the spur line until the cost of construction shall have been repaid by the railway.

Grand Trunk R. Co. v. Hepworth Silica Pressed Brick Co., 21 D.L.R. 480, 51 Can. S.C.R. 81.

D. DUTY AS TO DEPOTS; STOPPING TRAINS; DUTY TO RUN TRAINS.

(§ IV D—551)—MAINTENANCE OF AGENT AT STATION—AMOUNT OF REVENUE.

The Board has fixed an arbitrary amount of \$15,000 as the revenue which a railway company should derive at a station to warrant it in ordering the maintenance of an agent.

Ozias v. C.P.R. Co., 18 Can. Ry. Cas. 425.

(§ IV D—552)—TERMINAL TRAFFIC FACILITIES —REFUSAL TO FRUIT DEALERS—UNJUST DISCRIMINATION.

Under the Railway Act, the statutory duties of the railway company to furnish facilities relate, in so far as the terminal station is concerned, merely to the unloading and delivery of the goods, and do not include facilities for their sale; thus the prohibitions against undue preference or unjust discrimination in furnishing facilities do not apply to the failure or refusal of a railway company to allot space to a wholesale fruit firm in a building owned by it used

by other fruit dealers as a market into which railway tracks run. [Re Western Tolls, 17 Can. Ry. Cas. 123, pp. 148 to 156; Twin City Transfer Co. v. C.P.R. Co., 15 Can. Ry. Cas. 323, followed. Purcell v. G.T.P.R. Co., 13 Can. Ry. Cas. 194; Donovan v. Pennsylvania R. Co., 199 U.S.R. 279; South Western Produce Distributors v. Wabash R. Co., 20 I.C.C.R. 458; Cosby v. Richmond Transfer Co., 20 I.C.C.R. 72; Perth General Station Committee v. Ross, [1897] A.C. 479, Barker v. Midland R. Co., 18 C.B. 46, referred to.]

Cuneo Fruit & Importing Co. v. G.T.R. Co., 18 Can. Ry. Cas. 414.

CEMETERIES.

Scope of powers of cemetery company, see Corporations and Companies, IV D.

CERTIORARI.

I. JURISDICTION; USE OF WRIT GENERALLY.

A. In general.

B. Existence of other remedy.

II. PROCEDURE; HEARING; DETERMINATION.

I. Jurisdiction; use of writ generally.

A. IN GENERAL.

(§ I A—1)—JURISDICTION OF JUDGE OF KING'S BENCH.

A Judge of the King's Bench Division has jurisdiction under O. 62, rr. 1-3, of the Judicature Act, 1909, in certiorari proceedings, and the jurisdiction there given is not limited by the Act 3 Geo. V. (1913), ch. 23, to the Appeal Division or a Judge thereof.

The King v. Borden; Ex parte Kinnie, 42 N.B.R. 641.

(§ I A—2)—REVIEW OF SUMMARY CONVICTION—SUFFICIENCY OF EVIDENCE.

Upon a motion to quash a summary conviction for keeping intoxicating liquor for sale contrary to the Liquor License Act (Ont.), upon the ground that there was no evidence of the offence, the Court will not quash the conviction if there was evidence upon which it was open to the magistrate to find that the liquor found was intoxicating and that it was illegally kept for sale.

Rex v. Scaynetti, 25 Can. Cr. Cas. 40, 34 O.L.R. 373, 9 O.W.N. 13.

(§ I A—2)—QUASHING ORDER MADE WITHOUT JURISDICTION—SERVICE OUT OF PROVINCE.

An order for review made by a Judge of the County Court will be quashed on certiorari if made without jurisdiction. Service of an order for hearing of a review on the opposite party out of the province is not sufficient to confer jurisdiction on the reviewing Judge under C.S. 1903, ch. 122, sec. 6, and an order based on such a service will be quashed on certiorari.

The King v. Jonah; Ex parte Pugsley, 43 N.B.R. 166.

(§ I A—3)—PROCEDURE—NOTICE OF MOTION.

It is competent for a Court authorized

under Cr. Code, sec. 576, to make rules of procedure inter alia as to certiorari, to substitute a practice by notice of motion for the former process by writ and order nisi.

Rex v. Titchmarsh, 22 D.L.R. 272, 24 Can. Cr. Cas. 38, 32 O.L.R. 569, 7 O.W.N. 505.

(§ I A—3)—IRREGULAR CONVICTION—DEFECTIVE DEPOSITIONS.

Where depositions in a summary conviction matter returned on certiorari contained no caption (Code form 16), nor were they annexed to the information or otherwise identified as pertaining thereto, the Court may decline to peruse them for the purpose of supporting, under Cr. Code, sec. 1124, a conviction irregular on its face because not under seal. [Bond v. Connée, 15 Ont. R. 716 and 16 A.R. 398, approved.]

Rex v. Dickey, 25 Can. Cr. Cas. 55, 9 W.W.R. 142, 32 W.L.R. 404.

(§ I A—3)—REVIEW OF JURISDICTION TO HEAR SUMMARY CONVICTION APPEAL.

Notwithstanding sec. 1122 of the Criminal Code, certiorari will lie to review the jurisdiction of a District Court Judge to hear an appeal under Cr. Code, sec. 749, from a summary conviction.

Fauchaux v. Georgett, Rex v. Georgett (No. 2), 25 Can. Cr. Cas. 76, 8 S.L.R. 325, 32 W.L.R. 863, 9 W.W.R. 458.

(§ I A—3)—CONVICTION WITHOUT JURISDICTION.

Certiorari can be maintained on the ground of a total want of jurisdiction even where there is a statutory direction that proceedings of a certain tribunal shall not be removed by certiorari; express words taking away the certiorari are inapplicable where there is a want or excess of jurisdiction, but would apply to a mere irregularity in the exercise of jurisdiction.

Fauchaux v. Georgett, Rex v. Georgett (No. 2), 25 Can. Cr. Cas. 76, 8 S.L.R. 325, 32 W.L.R. 863, 9 W.W.R. 458.

(§ I A—9)—REVIEW OF PETITION UNDER LIQUOR LICENSE ACT.

A sufficiently signed petition under the B.C. Liquor License Act is a condition precedent to the founding of jurisdiction in the license commissioners to act thereon, and their acceptance of the petition as being sufficiently signed is open to review on certiorari.

The King v. Bryson, 21 D.L.R. 777, 31 W.L.R. 307, 21 B.C.R. 313.

(§ I A—9)—LIQUOR LICENSE COMMISSIONERS—REVIEW OF JURISDICTION—DISCRETION.

Certiorari to review the jurisdiction of license commissioners in granting a license upon a petition, said to have been insufficiently signed, is discretionary with the Court where the applicant is not specially aggrieved beyond the injury suffered by the public generally.

The King v. Bryson, 21 D.L.R. 777, 31 W.L.R. 307, 21 B.C.R. 313.

(§ I A—9)—LIQUOR CASES—FINDING AS TO PRIOR CONVICTIONS.

The question whether the defendant, found guilty of a third offence against the Canada Temperance Act, had been previously convicted or not, or how often or when, is a matter entirely within the jurisdiction of the magistrate, and, certiorari being taken away by that statute, the magistrate's finding as to prior convictions is conclusive. (Per Grimmer, J.) [R. v. Brown, 16 Ont. R. 48; *Ex parte Batson*, 10 Can. Cr. Cas. 240, referred to.]

Ex parte Gogan; *Rex v. Steeves*, 24 Can. Cr. Cas. 371, 43 N.B.R. 285.

(§ I A—9) — LIQUOR CASES — CONVICTION BASED ON STATUTORY PRESUMPTION.

On a charge of keeping liquor for sale in contravention of the Sales of Liquor Act, 1915, Sask., ch. 39, where the accused is shewn to have had a case of liquor in his possession he must, under sec. 128 of that Act, satisfy the magistrate of the bona fides of the transaction whereby he claimed to have acted as an agent for others in purchasing it; and a summary conviction will be affirmed in certiorari proceedings unless the evidence was such as to convince the Court that the magistrate should have been satisfied on the question of bona fides and particularly where the accused had falsely stated the contents to the constable who inquired about the package. [This decision reversed on appeal, see *Rex v. McPherson* (No. 2), 25 Can. Cr. Cas. 62.]

Rex v. McPherson; *McPherson v. Morrison*, 25 Can. Cr. Cas. 60, 9 W.W.R. 164, 32 W.L.R. 385.

(§ I A—9)—SUMMARY CONVICTIONS FOR UNLAWFUL SALE OF LIQUOR—ONUS.

The Court on certiorari will not consider the weight of conflicting evidence, but where there is no legal evidence at all to support the finding the conviction cannot be upheld; and a summary conviction for illegally keeping liquor for sale where there were no facts from which an inference of guilt could be drawn and where the testimony for the accused was corroborated and uncontradicted that he purchased the liquor then in transit as the agent for friends of his, and was to be reimbursed only the amount expended, will be set aside, notwithstanding a statutory provision such as that contained in the Sales of Liquor Act (Sask.), sec. 128, that the burden of proving the right to keep liquor shall be on the person accused of improperly or unlawfully keeping for sale. [Re *Trepanier*, 12 Can. S.C.R. 111; *R. v. McArthur*, 14 Can. Cr. Cas. 343; *R. v. Allingham*, 21 Can. Cr. Cas. 268; *R. v. McIlroy*, 22 Can. Cr. Cas. 123, referred to; *R. v. McPherson* (No. 1), 25 Can. Cr. Cas. 60, reversed.]

Rex v. McPherson; *McPherson v. Morrison* (No. 2), 25 Can. Cr. Cas. 62, 8 S.L.R. 412, 9 W.W.R. 613, 33 W.L.R. 21.

B. EXISTENCE OF OTHER REMEDY.

(§ I B—11)—REMEDY BY APPEAL.

A provincial law which makes provision for appeals in summary proceedings under it, and which further declares that the "proceedings on such appeals" shall in other respects be "governed" by the same rules as appeals from summary convictions or orders made by justices of the peace under the Cr. Code, does not make applicable to such appeals the provision of Cr. Code, sec. 1122, forbidding a certiorari to remove a conviction when an appeal has been taken; Code sec. 1122 deals rather with the consequences of an appeal than with the proceedings thereon, and semble, even if it applied, would not prevent the granting of a certiorari on the question of jurisdiction. [Johnston v. O'Reilly, 12 Can. Cr. Cas. 218, 16 Man. L.R. 405; *R. v. St. Pierre*, 5 Can. Cr. Cas. 365; *R. v. Horning*, 8 Can. Cr. Cas. 268; *R. v. Ashcroft*, 2 Can. Cr. Cas. 385, referred to.]

Davis v. Feinstein, 24 D.L.R. 798, 24 Can. Cr. Cas. 160, 25 Man. L.R. 507, 8 W.W.R. 1003, 31 W.L.R. 635.

(§ I B—11)—REMEDY BY REVIEW.

A certiorari will not be granted with a view of quashing a judgment of an inferior Court for want of jurisdiction in the trial justice in the absence of a satisfactory explanation of why the remedy by review was not taken.

Ex parte Beloni St. Onge, 43 N.B.R. 517, 25 Can. Cr. Cas.

(§ I B—12)—FAILURE TO APPEAL IN TIME.

Where the Justice's jurisdiction was not in question nor was any exceptional reason set up, such as gross perversion of justice, the Court will exercise its discretion by refusing to quash a summary conviction removed on certiorari, if the accused might have appealed from the conviction had he given notice of appeal in due time under Cr. Code, sec. 750. [R. v. Deleгарde, *Ex parte Cowan*, 9 Can. Cr. Cas. 454, 36 N.B.R. 503; *Ex parte Ross*, 1 Can. Cr. Cas. 153; *Reg. v. Herrell* (No. 2), 3 Can. Cr. Cas. 15, referred to.]

Ex parte Doucet; *Rex v. O'Brien*, 24 Can. Cr. Cas. 347, 43 N.B.R. 361.

II. Procedure; hearing; determination.

(§ II—19)—REGULARITY OF NOTICE.

Where a notice of motion for a certiorari is intitled in the Supreme Court of Saskatchewan, the omission to add the designation of the appropriate judicial district of that province will not invalidate the notice.

Fauchaux v. Georgett; *Rex v. Georgett* (No. 2), 25 Can. Cr. Cas. 76, 8 S.L.R. 325, 32 W.L.R. 863, 9 W.W.R. 458.

(§ II—24)—EXTENT OF REVIEW—JURISDICTION—EVIDENCE OF THE OFFENCE.

Where certiorari is taken away by statute and is consequently restricted to the matter of jurisdiction, the erroneous finding by the

magistrate of one of the constituents of the offence itself as distinguished from some collateral fact upon which his jurisdiction was contingent, does not go to the magistrate's jurisdiction so as to support a certiorari. [R. v. Walsh, 29 N.S.R. 531, followed; Colonial Bank v. Willan, L.R. 5 P.C. 417, applied.]

Rex v. Hoare, 24 Can. Cr. Cas. 279, 49 N.S.R. 119.

(§ II—28)—SUMMARY CONVICTION BAD ON ITS FACE—FILING SUBSTITUTED CONVICTION.

On a motion for a writ of certiorari, where the practice is to hear the merits on the motion for the writ, and if granted to include an order quashing the conviction on the return being made, the Court will not permit the filing of a substituted conviction made up by the Justice after notice of the certiorari application to remedy the defect of the first formal conviction in not stating any place at which the offence was committed, where the depositions themselves did not shew where the offence was committed, and consequently did not shew territorial jurisdiction of the magistrate. [Compare R. v. Oberlander, 16 Can. Cr. Cas. 244, 15 B.C.R. 134; R. v. Pickard, 11 D.L.R. 423, 21 Can. Cr. Cas. 250.]

Rex v. Aikens, 21 D.L.R. 633, 23 Can. Cr. Cas. 467, 48 N.S.R. 509.

(§ II—28)—AMENDMENT OF SUMMARY CONVICTION—UNLAWFUL PRACTICE OF DENTISTRY.

An objection that a conviction for unlawfully practising dentistry in contravention of the Dental Profession Act, R.S.S. ch. 108, does not specify the particular acts which constituted the alleged practising, may be remedied on certiorari by the Court directing an amendment of the conviction so as to insert a statement of the several acts shewn in the evidence to have been committed by the defendant, if the Court finds that the magistrate had jurisdiction and that an offence was committed of the nature specified in the conviction. [Cr. Code, sec. 1124; R. v. Coulson, 1 Can. Cr. Cas. 114, applied; R. v. Harris, 13 Can. Cr. Cas. 393, referred to.]

Rex v. Schilling, 21 D.L.R. 60, 23 Can. Cr. Cas. 380, 8 S.L.R. 70.

(§ II—28)—NEW GROUNDS—AMENDMENT—DISCRETION.

Leave to add new grounds to an order nisi to quash in certiorari proceedings is discretionary with the Court and should be refused at the hearing if the applicant has had ample time to formulate them and give notice to the opposite party and has failed to do so.

Ex parte Murchie; Rex v. Gloucester, 24 Can. Cr. Cas. 228.

(§ II—30)—CONTROVERTING THE RETURN.

The Court will not hear evidence on a certiorari application to contradict the return of the magistrate as to the course of procedure at the trial; affidavits to be receivable to disprove jurisdiction must be

directed to the commencement of the inquiry and not to the facts disclosed in the progress of same. (Per Barry, J.) [Ex parte Steeves, 15 Can. Cr. Cas. 160, 39 N.B.R. 2; R. v. Bolton (1841), 1 Q.B. 66, followed.]

Ex parte Richard; Rex v. Steeves, 24 Can. Cr. Cas. 183, 42 N.B.R. 596.

(§ II—36)—OFFICIAL TITLE OF MAGISTRATE INCOMPLETELY STATED—AMENDMENT.

On certiorari the Court has power to amend a summary conviction by adding to the magistrate's official designation as a county police magistrate words to indicate that he was ex officio a city magistrate as regards an offence committed in the city, if by statute the original appointment for the county has been extended to include the city without further appointment and without any further oath of office being required. (Per Barry, J.)

Ex parte Richard; Rex v. Steeves, 24 Can. Cr. Cas. 183, 42 N.B.R. 596.

CHAMPERTY AND MAINTENANCE.

Contingent agreements between solicitor and client, see Solicitors.

CHARACTER.

Proof of, generally, see Evidence, XI.
Libellous charges affecting, see Libel and Slander.

CHARGE.

Of realty under will, see Wills, III.
Of mortgage, see Mortgage.
Under land titles, see Land Titles, III.
Carrier's charges, see Carriers.
Under judgment, see Judgment; Execution.

CHARITABLE INSTITUTIONS.

See Charities.
Charitable gifts, see Wills.
Benevolent societies, see Benevolent Societies.

CHARITIES.

I. NATURE AND VALIDITY.

- a. In general.
- b. What are charities.
- c. Conditions; existence and capacity of trustees or beneficiaries.
- d. Definiteness; discretion of trustees.

II. ENFORCEMENT; CONTROL; FORFEITURE; LIABILITY.

- a. In general.
- b. Cy-près doctrine.
- c. Liability for damages.

As to limitations of charitable bequests, see Wills, III.

I. Nature and validity.

D. DEFINITENESS; DISCRETION OF TRUSTEES.

(§ I D—39)—CROWN GRANT OF LAND TO USE OF CLERGYMEN—DISCRETION AS TO APPOINTMENT OF PROCEEDS.

On a Crown grant of land to trustees their

heirs and assigns to be held to and for a glebe for the use and benefit of the ministers and congregations of the Church of England in a certain town or city, the income of the trust is to be divided in aliquot parts according to the number of the churches of that denomination existing from time to time in the city; the minister and congregation of each church may properly be treated as a single entity, and payment may be made to the rector and churchwardens, leaving it to them to apportion the distribution as between the minister and congregation. [Dumoulin v. Langtry, 13 Can. S.C.R. 258; Re Hislop, 22 D.L.R. 710, 8 O.W.N. 53, referred to.]

Re Chatham Glebe Trust, 22 D.L.R. 798, 8 O.W.N. 169.

II. Enforcement; control; forfeiture; liability.

C. LIABILITY FOR DAMAGES.

(§ II C—52)—NEGLIGENCE—INJURY TO PATIENT IN HOSPITAL—LIABILITY—CARE IN SELECTION OF ATTENDANTS.

Lavere v. Smith's Falls Public Hospital, 24 D.L.R. 866, 34 O.L.R. 216, 8 O.W.N. 548.

CHASTITY.

As affecting marriage, see Marriage; Divorce.

Abuse of chastity, see Seduction.

As affecting character, see Libel and Slander.

CHATTEL MORTGAGE.

I. IN GENERAL.

II. VALIDITY; CONSIDERATION.

A. Generally.

B. Description of property.

C. Property subject to mortgage; after-acquired property.

D. Possession; power to sell.

III. FILING; RECORDING; RENEWING.

IV. EFFECT; RIGHTS OF PARTIES; PRIORITIES.

A. In general.

B. Priorities.

V. ASSIGNMENT; SATISFACTION; ABANDONMENT; WAIVER.

VI. ENFORCEMENT.

See also Bills of Sale.

Annotation.

Equity; agreement to mortgage after-acquired property; beneficial interest: 13 D.L.R. 178.

I. In general.

(See previous Annual Digests.)

II. Validity; consideration.

A. GENERALLY.

(§ II A—5)—VERBAL AGREEMENT—RIGHT OF SIMPLE CREDITOR TO ATTACK VALIDITY.

The validity of a chattel mortgage executed in pursuance of a verbal agreement cannot

be attacked by a simple creditor under sec. 8 of the Bills of Sale and Chattel Mortgage Act, R.S.M. 1913, ch. 17. [Parkes v. St. George, 10 A.R. (Ont.) 496; Empire Sash, etc., v. Maranda, 21 Man. L.R. 605, followed.]

Richards & Brown v. Leonoff, 24 D.L.R. 180, 25 Man. L.R. 548, 8 W.W.R. 966, 31 W.L.R. 621.

(§ II A—5)—SUFFICIENCY OF DESCRIPTION—STATEMENT OF CONSIDERATION—ASSURANCE IN TWO DOCUMENTS—OMISSION OF RATE OF INTEREST.

A chattel mortgage upon a certain number of horses and cows and 150 tons of hay and "all other goods and chattels in and upon the premises occupied by the mortgagor, or in and upon any other premises the property of the mortgagor, together with all goods and chattels that may hereafter be brought upon the said lands in addition to renewal or substitution of the above-enumerated goods and chattels" all of which was then described as being in and upon lands "specified in the chattel mortgage." The promissory note was stated in the chattel mortgage to be annexed thereto, but it was not so annexed when the mortgage was registered. Recitals in the chattel mortgage shewed the date and the amount of the note, the time when it became payable and the fact that it carried interest, but failed to specify the rate of interest. The consideration set out in the chattel mortgage was "a loan of \$1,200 on a promissory note of even date":—Held, (1) that the statement of consideration was sufficiently stated in the chattel mortgage. (2) That the registration of the chattel mortgage was defective, as under the circumstances it could not be said that the whole assurance was registered: per Duff and Brodeur, JJ.; because of the omission of the rate of interest from the recital of the promissory note in the chattel mortgage: per Anglin, J. Davies and Idington, JJ., considered that owing to the full recital of the note in the mortgage, there was a registration of the complete assurance. Fitzpatrick, C.J., did not consider the question, as in his view no property passed to B., and the chattel mortgage was in any case good against the grantor. (3) That there was sufficient description of the goods in the chattel mortgage. (4) That the transaction was not a violation of the Bank Act, sec. 76: per Curiam (Idington, J., dissentiente). "Goods, wares and merchandise" include farm stock, though the words do not include all forms of personal property (per Idington, J).

Royal Bank v. Ball & Whieldon, 52 Can. S.C.R. 254, 9 W.W.R. 776, reversing 22 D.L.R. 647.

(§ II A—7)—STATEMENT OF BONA FIDES.

A chattel mortgage in which the consideration was stated to be "a loan of \$1,200 on promissory note of even date" is not voided under the Bills of Sale Act, B.C., where in fact a promissory note for that

amount was then given by the mortgagor to the mortgagee and the whole amount went to his credit subject to a deduction of an overdue account of more than \$1,100; the consideration is to be held as truly set forth although such overdue debt was not disclosed. [Credit Co. v. Pott, 6 Q.B.D. 295, applied.]

Royal Bank v. Whieldon, 22 D.L.R. 647, 21 B.C.R. 267, 8 W.W.R. 734.

[Reversed in 52 Can. S.C.R. 254.]

(§ II A-7)—“\$1,500 NOW PAID”—PAST DUE AND ACCRUING DEBTS—CONSIDERATION TRULY EXPRESSED.

A chattel mortgage in which the consideration is stated to be “the sum of \$1,500 now paid” truly expresses the consideration so as to satisfy sec. 13 of the Chattel Mortgage Act, R.S.S. ch. 144, where the consideration money was made up of a past due note and a new advance from the mortgagor to the mortgagee. [Patterson v. Palmer, 4 S.L.R. 487; Credit Co. v. Pott, 6 Q.B.D. 295, applied.]

McCready v. International Harvester Co., 21 D.L.R. 769, 8 S.L.R. 261.

(§ II A-7)—TRUE CONSIDERATION—BALANCE OF PURCHASE PRICE—VERBAL AGREEMENT.

The sale of a business by verbal agreement creates a valid existing debt for the purchase price which may form the bona fides of a chattel mortgage, though such agreement is formally reduced to writing subsequent to the execution of the mortgage; and a recital in the mortgage that it was given as security for the balance of such purchase price truly sets forth the consideration thereof.

Russell v. Quaker Oats Co., 25 D.L.R. 82, 8 S.L.R. 399, 9 W.W.R. 617, 32 W.L.R. 953.

(§ II A-7)—BONA FIDES OF CONSIDERATION—UNTRUE EXPRESSION OF.

A chattel mortgage given to secure a past indebtedness of \$600 and a future advance of \$100, the consideration expressed in the mortgage being “\$700 in hand paid,” while the actual indebtedness at the time being only \$600, does not truly express the consideration as required by the statute, and will render the mortgage void as against subsequent purchasers and mortgagees in good faith.

Averill v. Caswell & Co., 23 D.L.R. 112, 8 S.L.R. 269, 8 W.W.R. 1135, 31 W.L.R. 953.

(§ II A-7)—AFFIDAVIT OF OFFICER OF CORPORATION—FAILURE TO STATE PERSONAL KNOWLEDGE.

An affidavit of bona fides of a chattel mortgage sworn by an officer of a corporation is defective if it fails to state, as required by sec. 24 of the Chattel Mortgage Act (Sask.), as enacted by ch. 67, sec. 22, of the statutes 1913, that the deponent is aware of the circumstances connected with the mortgage and has a personal knowledge of the facts deposed to.

Averill v. Caswell & Co., Ltd., 23 D.L.R. 112, 8 S.L.R. 269, 8 W.W.R. 1135, 31 W.L.R. 953.

(§ II A-7)—VALIDITY OF AFFIDAVIT SWORN BEFORE SOLICITOR.

A chattel mortgage is not rendered invalid because the affidavit of bona fides is sworn before the solicitor acting in the matter. [Baker v. Ambrose, 2 Q.B. 372, distinguished; Barthels, Shewan & Co. v. Winnipeg Cigar Co., 2 A.L.R. 21, referred to.]

Averill v. Caswell & Co., Ltd., 23 D.L.R. 112, 8 S.L.R. 269, 8 W.W.R. 1135, 31 W.L.R. 953.

C. PROPERTY SUBJECT TO MORTGAGE; AFTER-ACQUIRED PROPERTY.

(§ II C-15)—INTEREST OF PURCHASER UNDER CONDITIONAL SALE.

The interest of a purchaser under a conditional sale, whereby the title to the goods remains in the seller until the price is fully paid, may form the subject matter of a chattel mortgage.

Sharp v. Ingles, 23 D.L.R. 636, 8 W.W.R. 1325, 32 W.L.R. 150.

D. POSSESSION; POWER TO SELL.

(§ II D-25) — ABSENCE OF DEFEASANCE CLAUSE—POSSESSION IN MORTGAGEE.

The right of possession is an incident to the right of property in the goods, and, where a chattel mortgage vests the right of property in the chattel mortgagee and there is no defeasance clause or other stipulation to the contrary, the chattel mortgagee becomes entitled to the possession. [Smith v. Fair, 11 A.R. (Ont.) 755, referred to.]

McDermott v. Fraser, 23 D.L.R. 430, 25 Man. L.R. 298, 8 W.W.R. 196.

(§ II D-29)—SUBSEQUENT CHANGE OF POSSESSION—SEIZURE WITHOUT REMOVAL.

A mere seizure by a bailiff under a distress warrant on the maturity of a mortgage, without removing the goods from the mortgagor's control, does not amount to such an actual change of possession of the mortgaged goods as will cure a defective mortgage as against subsequent equities.

Averill v. Caswell & Co., Ltd., 23 D.L.R. 112, 8 S.L.R. 269, 8 W.W.R. 1135, 31 W.L.R. 953.

III. Filing; recording; renewing.

(See previous Annual Digests.)

IV. Effect; rights of parties; priorities.

A. IN GENERAL.

(§ IV A-40)—RIGHT TO DISTRESS UNDER LAND MORTGAGE.

Where a mortgage of land contains an attornment clause whereby the mortgagor becomes the tenant of the mortgagee at a yearly rent equivalent to the annual interest, the mortgagee has a right of distress in like

manner as a landlord for interest in arrear, and this right may be exercised under the Distress Act, R.S.M. 1913, ch. 55, sec. 5, as against a chattel mortgagee of the goods distrained.

McDermott v. Fraser, 23 D.L.R. 430, 25 Man. L.R. 298, 8 W.W.R. 196.

(§ IV A-40)—SEIZURE AND SALE UNDER PRIOR UNREGISTERED MORTGAGE—VALIDITY OF AS AGAINST SUBSEQUENT MORTGAGEE IN GOOD FAITH—PRIOR MORTGAGEE MUST ACCOUNT TO SUBSEQUENT MORTGAGEE—RIGHT OF SUBSEQUENT MORTGAGEE TO BRING ACTION BEFORE HIS MORTGAGE BECOMES DUE—REFERENCE TO TAKE ACCOUNTS.

Stewart Sheaf Loader v. Jacobson, 30 W.L.R. 944.

(§ IV A-40)—INJUNCTION—TERMS.
Wallace v. Clapp, 8 O.W.N. 438.

B. PRIORITIES.

(§ IV B-45)—CREDITORS.

The expression "creditor" in sec. 5 of the Chattel Mortgage Act, Man., declaring that a mortgage of goods not accompanied by immediate delivery and an actual and continued change of possession and not registered, shall be void as against "the creditors of the mortgagor and as against subsequent purchasers and mortgagees in good faith," means an execution creditor or a judgment creditor, i.e., one who is in a position to assert and exercise a present right to take possession of the goods. [Barron on Chattel Mortgages, 2nd revised edition, 501, referred to.]

McDermott v. Fraser, 23 D.L.R. 430, 25 Man. L.R. 298, 8 W.W.R. 196.

(§ IV B-45)—DEFECTIVE AFFIDAVIT—EXECUTION CREDITORS.

A chattel mortgagee whose mortgage is not effectively registered because of a defective affidavit will not be protected as against execution creditors of the mortgagor by the fact that he took and held actual possession against the mortgagor for a short time after the execution of the mortgage, if he afterwards voluntarily parted with possession to the mortgagor so that the latter appeared thereafter to be the ostensible owner of the mortgaged goods. [Ex parte Jay, L.R. 9 Ch. 697, and Re Wood, 40 L.T. 104, referred to.]

Ritchie Contracting Co. v. Brown, 21 D.L.R. 86, 21 B.C.R. 89, 8 W.W.R. 84, 30 W.L.R. 723.

(§ IV B-45)—REMOVAL OF MORTGAGED CHATTELS—RIGHTS OF SUBSEQUENT PURCHASERS.

The failure to re-register a mortgage in the district where mortgaged animals are removed within six months of their removal as required by the Bills of Sale Act (Man.), does not give a purchaser a better title to them as against the mortgagee where the purchase is made before the expiry of the

statutory period. [Hodgins v. Johnston, 5 A.R. (Ont.) 449, applied.]

McIntyre v. Prefontaine, 23 D.L.R. 139, 25 Man. L.R. 572, 8 W.W.R. 1149, 31 W.L.R. 928.

(§ IV B-45)—VALIDITY AGAINST EXECUTION CREDITOR OF MORTGAGOR—PARTNERSHIP—INTERPLEADER ISSUE.

Weddell v. Douglas, 8 O.W.N. 455.

V. Assignment; satisfaction; abandonment; waiver.

(§ V-50)—SET-OFF—APPROPRIATION OF PAYMENTS—RIGHTS OF ASSIGNEE.

Mitchell v. Buckner, 9 O.W.N. 133.

VI. Enforcement.

(§ VI-55)—RIGHT TO DISTRESS.

Where the land mortgagee having a right to distrain for rent to the amount of the interest overdue under the terms of his mortgage, includes in his distress not only such interest but an instalment of principal money for which he had the authority of a mere personal license from the mortgagor, the distress is not thereby vitiated in toto as to a chattel mortgagee; the inclusion of the principal money is irregularity only, and will not prevent the distress being upheld for the amount of the interest rental.

McDermott v. Fraser, 23 D.L.R. 430, 25 Man. L.R. 298, 8 W.W.R. 196.

(§ VI-55)—SEIZURE AND CONVERSION OF CHATTELS UNDER—JUSTIFICATION—EVIDENCE—LIEN-NOTE—FINDINGS OF TRIAL JUDGE—APPEAL.

Burlak v. Beneroff, 8 O.W.N. 140.

(§ VI-55)—SEIZURE AND SALE OF GOODS—PART PAYMENT BY ASSIGNMENT OF SECURITIES—ACCEPTANCE—FINDING OF FACT—EXCESSIVE SEIZURE—ASSESSMENT OF DAMAGES.

Avery & Son v. Parks, 9 O.W.N. 125.

CHEQUES.

See also Bills and Notes.

Payment by cheque, see Payment.

Duties of banks as to payment, see Banks.

Alteration affecting validity, see Alteration of Instruments.

CHILDREN.

Relation between parent and children generally, see Parent and Child.

In general, see Infants.

Dangerous attractions, see Negligence.

CHOICE OF REMEDIES.

See Election of Remedies; Action.

By servant for injuries, see Master and Servant, V.

CHOSE IN ACTION.

Annotation.

Definition; primary and secondary meaning in law: 10 D.L.R. 277.

CHURCHES.

Generally, see Religious Societies.
 Gifts to, see Wills, III.
 See also Charities; Benevolent Societies.

CITIES.

See Municipal Corporations; Towns.

CIVIL RIGHTS.

See Constitutional Law; Aliens.

Annotation.

Status of alien enemies during war: 23 D.L.R. 375.

CLAIMS.

As against railway companies, see Carriers.

Against decedents' estate, see Executors and Administrators.

In expropriation proceedings, see Eminent Domain.

Against municipalities, see Municipal Corporations.

Workmen's compensation, see Master and Servant.

Land claims, see Public Lands.

Mining claims, see Mines and Minerals.

CLERKS.

See Officers.

CLOUD ON TITLE.

See Land Titles; Ejectment; Vendor and Purchaser.

CLUBS.

See Associations; Benevolent Societies; Corporations and Companies.

Validity of subscription to Y.M.C.A., see Contracts IC.

COAL.

Coal mines, leases, see Mines and Minerals

CODICIL.

See Wills.

COLLEGES.

See Schools.

Enjoining invalid elections, see Injunction.

COLLISION.

Injuries to employees, see Master and Servant.

Street car accidents, see Street Railways.

Between automobiles, see Automobiles.

On railways, see Railways; Carriers.

Between vessels, see Shipping, Admiralty; Negligence.

Jurisdiction in admiralty, see Courts.

Annotation.

Shipping: 11 D.L.R. 95.

(§ I A—1)—TUG AND TOW BOATS—RULES OF ROAD.

The rules of the road are not applied as strictly in the case of a tug and tow as where a single vessel is concerned. [The "Lord Bangor," 8 Asp. M.C. 217; C.P.R. Co. v. Bermuda, 13 Can. Ex. 389, referred to.]

Ontario Gravel Freighting Co. v. "A. L. Smith" and "Chinook," 22 D.L.R. 488, 15 Can. Ex. 111.

[Affirmed in "A. L. Smith" and "Chinook" v. Ontario Gravel Freighting Co., 23 D.L.R. 491, 51 Can. S.C.R. 39.]

COMBINATIONS.

See Monopoly; Conspiracy.

As to illegal trade combines, see Contracts.

COMMERCE.

Regulation of commerce, see Constitutional Law.

Transportation, see Carriers; Railways.

Taxation of commerce, see Taxation.

Annotation.

Effect of war on commerce with alien enemy: 22 D.L.R. 865, 23 D.L.R. 375.

COMMISSIONERS.

Railway commissioners, see Carriers; Railway Commission.

School commissioners, see Schools.

COMMISSIONS.

Of real estate agents, stock brokers, see Brokers.

Of administrator, see Executors and Administrators.

Of agents generally, see Principal and Agent.

Foreign commission to take evidence, see Depositions.

COMMON LAW.

Statutes in derogation of, see Statutes.

COMPANY.

See Corporations and Companies.

COMPOSITION WITH CREDITORS.

See Compromise and Settlement; Assignment for Creditors.

Upon winding-up of company, see Corporations and Companies, VI.

COMPROMISE AND SETTLEMENT.

For injuries causing death, see Death.

For workmen's compensation, see Master and Servant, V.

For claims against municipalities, see Municipal Corporations.

For claims against railways, see Carriers; Railways; Street Railways.

In expropriation proceedings, see Eminent Domain.

(§ I-4)—**SETTLEMENT OF ACTION ON BUILDING CONTRACT—VALIDITY.**

An agreement between an owner and a contractor for the construction of a building by which they settle their differences as follows: The owner to pay the price claimed and the contractor undertaking to do certain work as settled by the architects of the two parties, each party paying his own costs, is of the nature of a settlement with a compromising clause. Such settlement is void because it does not contain the essential conditions of a compromise.

Rousseau v. Raymond, 47 Que. S.C. 451.

CONDEMNATION PROCEEDINGS.

See Eminent Domain.

CONDITION.

In railroad ticket, see Carriers.

In contract, see Contract, IV.

Relating to real property, see Covenants and Conditions; Deeds; Vendor and Purchaser.

In Sales, see Sales.

CONDITIONAL SALE.

See Sale.

CONFESSION.

Admissibility and sufficiency of corroboration, see Evidence.

Judgment by, see Judgment.

CONFLICT OF LAWS.

I. AS TO RIGHTS.

A. In general.

B. As to contracts; insurance.

C. Status; marriage; domestic relations; legitimation.

D. Corporate matters.

E. Torts and crimes generally.

F. Insolvency; assignments for creditors.

G. Rights in property generally.

H. Transfers of property generally.

I. Chattel mortgages; conditional sales.

J. Descent and distribution; wills.

II. REMEDIES.

Foreign judgments, see Judgments.

Attachment against non-residents, see Attachment.

Foreign executors, see Executors and Administrators.

As to validity of foreign wills, see Wills.

Rights of aliens, see Aliens.

I. As to rights.

B. AS TO CONTRACTS; INSURANCE.

(§ I B 4—41)—**CARRIER'S LIMITATION OF LIABILITY.**

The responsibility for a delict is to be determined according to the law of the place where the delict occurs, but the rule is that if there is a contract limiting the responsibility, such contract is to be construed in

accordance with the law of the place where it was made. If that law is not proved, it is to be taken as being the same as the law of the province of Quebec.

Canadian Pacific R. Co. v. Parent, 24 Que. K.B. 193.

C. STATUS; MARRIAGE; DOMESTIC RELATIONS; LEGITIMATION.

(§ I C—65)—**ALIMONY.**

The payment of alimony is a personal obligation and the law governing the demand for it is that of the actual domicile of the consorts at the time of the demand, although the law of the domicile at the time of the marriage governs the effect of such marriage. [Church v. Hamilton, 20 D.L.R. 639, varied.]

Hamilton v. Church, 24 D.L.R. 266, 24 Que. K.B. 26.

(§ I C—66)—**MARRIAGE.**

The law of the country where a marriage is celebrated determines the validity of the ceremony; the personal capacity of the parties to the ceremony depends on the law of their domicile.

Johnston v. Hazen, 43 N.B.R. 154.

J. DESCENT AND DISTRIBUTION; WILLS.

(§ I J—147)—**REVOCATION OF WILL BY MARRIAGE—LAW GOVERNING.**

The principle as to whether a will is revoked by a second marriage is governed by the law of the matrimonial domicile and not by the law of the place where the property affected by the will is situated.

Davies v. Davies, 24 D.L.R. 737, 8 W.W.R. 803, 31 W.L.R. 396.

(§ I J—147)—**FOREIGN WILL—EFFECT OF MARRIAGE.**

A will made in a foreign jurisdiction in which the testator was domiciled, and which under the foreign law was not revoked by the subsequent marriage of the testator, is valid as to lands in Alberta subsequently acquired if made in the form required by Alberta law, notwithstanding the subsequent marriage in the foreign jurisdiction in which he was domiciled; and, semble, the result would be the same even had he owned the real estate in Alberta at the date of the marriage. [Re Martin, [1900] P. 211, reversed.]

Davies v. Davies, 24 D.L.R. 737, 8 W.W.R. 803, 31 W.L.R. 396.

(§ I J—147)—**LAND AND PERSONALTY—DOMICILE AND SITUS—RIGHTS OF WIDOW.**

Personal property being governed by the law of the domicile it followed that the personal property in Saskatchewan disposed of by the will is not subject to the law of Saskatchewan and could not be taken into consideration on the present application. That notwithstanding the provision of sec. 21 of the Devolution of Estates Act providing that land in Saskatchewan shall descend to the personal representative of the deceased

owner and be distributed as if it were personal estate, land still remains land until it is sold and the proceeds are available for distribution, and being land it is subject to and must be dealt with according to the *lex situs*, and that in consequence the widow had the right to ask for the statutory relief as against the real property situate in Saskatchewan.

Re Ostrander Estate, 8 S.L.R. 132, 30 W.L.R. 890, 8 W.W.R. 367.

II. Remedies.

(§ II—154)—PERSONAL ACTIONS—STATUTE OF LIMITATIONS—*LEX FORI*.

In matters of limitations of personal actions the *lex fori* prevails, except where the debt has been absolutely extinguished by the Statute of Limitations of the *locus contractus*. [*Rutledge v. U.S. Savings & Loan Co.*, 37 Can. S.C.R. 546, applied.]

Quaker Oats Co. v. Denis, 24 D.L.R. 226, 8 W.W.R. 877, 31 W.L.R. 579, affirming 19 D.L.R. 327, 8 A.L.R. 31.

CONSERVATION.

Conservatory attachment in Quebec, see Attachment; Garnishment.

Conservatory order upon seizure under execution, see Execution; Levy and Seizure.

CONSIDERATION.

Of bills and notes, see Bills and Notes.

For contracts generally, see Contracts.

Of deeds, see Deeds.

Parol evidence to shew, see Evidence.

Of conveyance attacked for fraud, see Fraudulent Conveyance.

CONSOLIDATION.

Of actions, see Action; in admiralty, see Admiralty.

CONSPIRACY.

I. IN GENERAL.

II. TO CHEAT, ROB OR STEAL.

III. TO INJURE THE BUSINESS OF ANOTHER.

A. In general.

B. Boycott.

IV. OF LABOURERS; STRIKES.

Validity of agreements creating monopoly, see Contracts.

I. In general.

(See previous Annual Digests.)

II. To cheat, rob, or steal.

(§ II—5)—FRAUDULENT USE OF STREET CAR TRANSFER—CONSPIRACY TO DEFRAUD COMPANY—CR. CODE, SEC. 444.

Rex v. Bythell, 24 Can. Cr. Cas. 276.

CONSTABLES.

Arrest by, see Arrest.

As public officer, see Officers.

Municipal liability for acts of, see Municipal Corporations, IIG.

CONSTITUTIONAL LAW.

I. IN GENERAL; GOVERNMENTAL MATTERS.

A. Adoption; amendment; construction.

B. Ex post facto and retrospective laws.

C. Vested rights.

D. Delegation of powers.

E. Separation of powers.

F. Local self-government.

G. Functions and powers of Dominion and Province.

H. Abandonment of power.

II. RIGHTS OF PERSONS AND PROPERTY.

A. Equal protection and privileges; abridging immunities and privileges.

B. Due process of law or law of the land; guaranty of right to life, liberty and property.

C. Police power.

D. Freedom of speech, press and worship.

E. Natural rights; implied guaranties.

F. Guaranties of justice.

G. Impairing obligations of contracts.

Provincial powers as to taxes, see Taxes.

Annotations.

Property and civil rights; non-residents in province: 9 D.L.R. 346.

Power of legislature to confer authority on Masters: 24 D.L.R. 22.

Denominational school privileges; constitutional guaranties: 24 D.L.R. 492.

I. In general; governmental matters.

D. DELEGATION OF POWERS.

(§ I D—88)—APPOINTMENT OF JUDGES—MASTERS—POWERS OF PROVINCE.

The office of the Master is essentially that of an officer, and while his duties are largely judicial in their character they do not constitute him a Judge within the meaning of sec. 96 of the B.N.A. Act, so as to require his appointment by the Governor-General.

Polson Iron Works v. Munns, 24 D.L.R. 18, 9 W.W.R. 231, 32 W.L.R. 534.

E. SEPARATION OF POWERS.

(§ I E 2—126)—ENCROACHMENT ON JUDICIARY—PROVINCIAL POWERS TO APPOINT ENQUIRY COMMISSIONS.

The Inquiries Act (Man.), which purports to give an Investigation Commission the same power to enforce the attendance of witnesses as is vested in a court of law in civil cases, which necessarily comprises the power to commit, is within the Provincial legislative powers under sec. 92 of the B.N.A. Act. [*Atty.-Gen. v. Col. Sugar Refining Co.*, [1914] A.C. 237, distinguished.]

Kelly & Sons v. Mathers, C.J.K.B., 23 D.L.R. 225, 25 Man. L.R. 580, 8 W.W.R. 1208, 31 W.L.R. 931, 32 W.L.R. 33.

G. FUNCTIONS AND POWERS OF DOMINION AND PROVINCE.

(§ I G—140)—PROVINCIAL REGULATION OF FORECLOSURE PRACTICE—POWERS OF MASTER.

A Provincial statute which confers upon a Master the extraordinary powers of a Judge, in respect of actions for the enforcement of mortgages or agreements for the sale of land, is in conflict with the appointive power of sec. 96 of the B.N.A. Act, which provides the appointment of Judges by the Governor-General-in-Council, and is therefore ultra vires.

Colonial Investment and Loan Co. v. Grady, 24 D.L.R. 176, 8 A.L.R. 496, 8 W.W.R. 995, 31 W.L.R. 575.

(§ I G—140)—MARRIAGE AND DIVORCE LAWS.

Under sec. 91 (26) of the B.N.A. Act, 1867, marriage and divorce are within the exclusive legislative powers of the Dominion Parliament, with the exception of the solemnization of marriage in the province, which is by sec. 92 (12) under the exclusive powers of the Legislatures of the province; therefore, sec. 36 of the Marriage Act, R.S.O. 1914, ch. 148, empowering the Supreme Court of Ontario to adjudge the invalidity of marriages entered into between persons of prohibited age without the required consent is beyond the powers of the Provincial Legislature.

Peppiatt v. Peppiatt, 34 O.L.R. 121, 8 O.W.N. 447.

II. Rights of persons and property.

A. EQUAL PROTECTION AND PRIVILEGES; ABRIDGING IMMUNITIES AND PRIVILEGES.

(§ II A 1—154) — SEPARATE SCHOOLS — ABRIDGEMENT OF CONSTITUTIONAL RIGHT — INTERFERING WITH USE OF FRENCH LANGUAGE.

Regulation No. 17 (of 1912 and 1913) of the Department of Education for Ontario providing inter alia the manner of conducting schools in districts where the scholars or a majority of them were French-speaking Canadians and making it compulsory that teachers in such schools should understand the English language does not infringe any constitutional right which the supporters of such schools have under the B.N.A. Act. [Mackell v. Ottawa Separate School Trustees, 18 D.L.R. 456, referred to.]

Mackell v. Ottawa Separate School Trustees, 24 D.L.R. 475, 34 O.L.R. 335, 8 O.W.N. 596.

(§ II A 1—154)—DENOMINATIONAL SCHOOLS — PROVINCIAL COMMISSION — ABRIDGEMENT OF CONSTITUTIONAL PRIVILEGE.

Ch. 45 of the Statutes of Ontario, 5 Geo. V., providing for the suspension of the powers of a denominational school board and for conferring such powers upon a commission, is within the legislative powers of the province and does not prejudicially affect any right or privilege with respect to

denominational schools guaranteed by sec. 93 of the B.N.A. Act, 1867.

Ottawa Separate School Trustees v. City of Ottawa; Ottawa Separate School Trustees v. Quebec Bank, 24 D.L.R. 497, 34 O.L.R. 624, 9 O.W.N. 193.

(§ II A 2—194a)—PROVINCIAL REGULATION OF EXTRA-PROVINCIAL CORPORATIONS.

The Extra-Provincial Companies Act, 1913 (P.E.I.), intended for the regulation of foreign or extra-provincial corporations is within the powers of a province comprised under the head of "Civil rights in the Province" in the B.N.A. Act, 1867.

Willett Martin Co. v. Full, 24 D.L.R. 672.

(§ II A 2—194a)—EXTRA-PROVINCIAL COMPANIES OF DOMINION INCORPORATION — REGULATION BY PROVINCE.

A provincial Act which deprives, upon a non-compliance with the registration requirements, an extra-provincial company, incorporated under a Dominion statute, of its right to maintain actions in the courts of the other province is ultra vires of the provincial legislature, and inoperative. [John Deere Plow Co. v. Wharton, 18 D.L.R. 353, [1915] A.C. 330, applied; Linde Can. Refrigeration Co. v. Sask. Creamery Co., 7 S.L.R. 245, reversed.]

Linde Canadian Refrigerator Co. v. Sask. Creamery Co., 24 D.L.R. 703, 51 Can. S.C.R. 400, 8 W.W.R. 1246.

(§ II A 3—200)—PROVINCIAL REGULATION OF DOMINION RAILWAY COMPANIES—EXTENDING RIGHTS OF OCCUPANCY.

Sec. 7 of ch. 15, Alberta Statutes, 1912, amending the Alberta Railway Act, 1907, by the addition of a sub-section purporting to make sec. 82 of the latter Act apply to Dominion railways so as to make the latter subject to a right of occupancy along with a provincial railway on terms to be approved by the Lieutenant-Governor in Council, is ultra vires of the Legislature of Alberta; it would be none the less ultra vires if the amendment had not been limited as it was by a clause thereof to cases where the taking of the Dominion railway company's land did not "unreasonably interfere with the construction and operation" of its own railway. [C.P.R. Co. v. Notre Dame de Bonsecours, [1899] A.C. 367, and Madden v. Nelson & F.S.R. Co., [1899] A.C. 626, applied.]

Atty.-Genl. for Alta. v. Atty.-Genl. of Canada, 22 D.L.R. 501, [1915] A.C. 363, 112 L.T. 177, 19 Can. Ry. Cas. 153.

(§ II A 3—200)—DOMINION POWERS OVER LANDS OF PROVINCIAL RAILWAY—EMINENT DOMAIN.

The Dominion Parliament has power, ancillary to its main legislative power regarding railways, to authorize the taking of lands of a provincial railway by a Dominion railway company, to the extent necessary

to give effect to the purpose of the Dominion incorporation.

Lachine, Jacques Cartier & Maisonneuve R. Co. v. Montreal Tramways, etc., 18 Can. Ry. Cas. 133.

(§ II A 3—207)—PROVINCIAL CORPORATION TAX — INSURANCE PREMIUMS — DIRECT TAXATION.

The Corporations Tax Act, R.S.O. 1914, ch. 27, as amended by 4 Geo. V. ch. 11, in so far as it imposes a tax upon the gross premiums received by any insurance company in respect of business transacted in Ontario, including every premium which by the terms of the contract is payable in Ontario, or which is in fact paid in Ontario, or is payable in respect to a risk undertaken in Ontario, or in respect of a person or property resident or situate in Ontario at the time of payment (clauses (a) and (e) of sec. 4 (3), as enacted by 4 Geo. V. ch. 11, sec. 2), is within the powers of the Ontario Legislature, and comes within the words of sub-sec. 2 of sec. 92 of the B.N.A. Act, 1867, "Direct Taxation within the Province." [*Bank of Toronto v. Lambe*, 12 App. Cas. 575, explained and applied.]

Treasurer of Ontario v. Canada Life Ass. Co., 22 D.L.R. 428, 33 O.L.R. 433, 8 O.W.N. 165.

(§ II A 4—211)—SUCCESSION DUTIES — PROPERTY IN ANOTHER PROVINCE.

Where a party dying, domiciled in Manitoba, has by a verbal agreement contracted to erect elevators in another province, but is to retain possession and control over them until they are fully paid for, the debt thus created constitutes "property" within Manitoba and is subject to succession duty under the Succession Duties Act, R.S.M. 4 and 5 Edw. VII. ch. 45, sec. 4. [*Re Muir Estate*, 18 D.L.R. 144, 24 Man. L.R. 310, affirmed.]

Standard Trusts Co. v. Treas. of Manitoba, 23 D.L.R. 811, 51 Can. S.C.R. 428, 9 W.W.R. 1226, affirming 18 D.L.R. 144, 24 Man. L.R. 310.

CONSTRUCTION.

Of contracts, generally, see *Contracts*, II.; *Covenants and Conditions*.

Of lease, see *Landlord and Tenant*.

Of deeds, see *Deeds*, II.

Of guaranty, see *Guaranty*; *Bonds*; *Principal and Surety*.

Of insurance contract, see *Insurance*, III.

Of railroads, interpretation of franchises, see *Railways*, II.; *Street Railways*.

Of statutes, see *Statutes*, II.

Of wills, see *Wills*, III.

CONTAGIOUS DISEASES.

See *Health*.

CONTEMPT.

I. WHAT CONSTITUTES.

A. In general.

B. Charge against Judge; publication as to pending case or judicial decision.

C. Disobedience.

II. PROCEDURE.

III. POWER AS TO.

IV. JUDGMENT; PUNISHMENT.

V. PURGING FROM CONTEMPT.

I. What constitutes.

B. CHARGE AGAINST JUDGE; PUBLICATION AS TO PENDING CASE OR JUDICIAL DECISION.

(§ I B—5)—NEWSPAPER COMMENT.

To support a charge of contempt of Court against a newspaper editor for published comment about a pending case, the comment must be such as to manifest that the object is to taint the source of justice and to obtain a result of legal proceedings different from that which would follow in the ordinary course.

Meriden Britannia Co. v. Walters, 25 D.L.R. 167, 24 Can. Cr. Cas. 364, 34 O.L.R. 518, 9 O.W.N. 87.

(§ I B—7)—NEWSPAPER CHARGE OF MISCONDUCT AGAINST CROWN PROSECUTOR.

For a newspaper to falsely publish pending the prosecution of a criminal charge that the Crown prosecutor had proceeded with the preliminary enquiry without the authority of the Attorney-General and that he was engaged in persecution and seeking notoriety in the matter, is contempt of Court punishable summarily on a motion to the Superior Court of criminal jurisdiction by committal or fine, as tending to impair the administration of justice; the article could not be considered as one directed to a criticism of the Attorney-General's Department as a branch of the public service so as to be exempt on that score.

Rex v. McInroy, Re Whiteside, 25 Can. Cr. Cas. 49, 32 W.L.R. 764.

C. DISOBEDIENCE.

(§ I C—10)—FAILURE OF SHERIFF TO EXECUTE WRIT OF REPLEVIN—DEFENCES.

The neglect or refusal of a sheriff to execute a writ of replevin after he had been furnished the statutory indemnity renders him subject to attachment for contempt of court; and it is no defence that at the time the writ was issued the animal therein mentioned was dead or that it was *feræ naturæ* and consequently not recoverable.

Stewart v. Horne, 24 D.L.R. 602.

(§ I C—13)—SALE OF PROPERTY BY JUDGMENT DEBTOR TO DEFEAT EXECUTION.

The sale *sous seing privé* by a debtor of his property before its seizure, but after judgment has been obtained against him, does not subject him to a rule nisi with arrest for contempt of court on the ground that it had prevented the seizure and sale of his property in execution of the judgment.

Latimer v. Gaudet, 48 Que. S.C. 270.

(§ I C—14)—DISOBEDIENCE OF INJUNCTION FORBIDDING RECEIPT OF MONEY.

A person forbidden by a restraining order from receiving any money out of a railway subsidy fund pending an action for the determination of rights thereunder is bound by the order so long as it remains undischarged, and his acceptance of money in breach of such order constitutes a contempt, although the payments were made by the Crown. [Judgment of Canada Supreme Court reversed; *Irvine v. Hervey*, 13 D.L.R. 868, 47 N.S.R. 310, affirmed.]

Eastern Trust Co. v. MacKenzie, Mann & Co., 22 D.L.R. 410, [1915] A.C. 750, 113 L.T. 346, 31 W.L.R. 248.

(§ I C—14)—BREACH OF INJUNCTION — MOTION TO COMMIT—ENFORCEMENT OF OBEDIENCE—STAY OF ORDER FOR COMMITMENT TO PERMIT OF OBEDIENCE BEING RENDERED — TERMS — UNDERTAKING — APOLOGY—COSTS.

Watson v. Jackson, 8 O.W.N. 410.

(§ I C—14)—DISOBEDIENCE OF INJUNCTION—CONSENT JUDGMENT — LOCUS PAENITENTIAE—UNDERTAKING TO DISCONTINUE MANUFACTURE OF GOODS IN FORM SIMILAR TO THOSE OF PLAINTIFFS—COSTS.

Real Cake Cone Co. v. Robinson, 8 O.W.N. 568.

II. Procedure.

(§ II—22)—OPPORTUNITY TO DEFEND SPECIFIC CHARGE.

A conviction for the criminal offence of contempt of Court can be made only where the specific charge against the accused has been distinctly stated and he has been given an opportunity of answering it. [*Chang Hang v. Piggott*, [1909] A.C. 312, applied; *Re Pollard*, L.R. 2 P.C. 106, referred to.]

Rex v. Evans, Re Fisher, 24 Can. Cr. Cas. 125, 8 W.W.R. 444.

III. Power as to.

(§ III B—35) — INTERFERENCE WITH FAIR TRIAL.

The disciplinary power of the Court to punish for contempt the publisher of a newspaper making improper comment on a pending case is to be sparingly and carefully exercised, and it must be shewn that it was probable that the publication would substantially interfere with a fair trial. [*Re Finance Union*, 11 Times L.R. 167; *Skipworth's Case*, L.R. 9 Q.B. 219, approved.]

Meriden Britannia Co. v. Walters, 25 D.L.R. 167, 24 Can. Cr. Cas. 364, 34 O.L.R. 518, 9 O.W.N. 87.

IV. Judgment; punishment.

(See previous Annual Digests.)

CONTEST.

Of elections, see Elections, IV.

Of mining claims, see Mines.

Of title to office, see Officers; Mandamus; Injunction.

Of will, see Wills, I.

Validity of bills of sale and chattel mortgages, preferences, see Bills of Sale; Chattel Mortgage; Assignment for Creditors; Fraudulent Conveyances.

CONTINUANCE AND ADJOURNMENT.

I. IN GENERAL.

II. GROUNDS FOR.

III. AFFIDAVITS.

IV. EFFECT OF ADMISSION.

I. In general.

(§ I—1)—DISCRETION OF MAGISTRATE.

Unless it appears that the refusal of a magistrate to grant an adjournment of the hearing results in the accused being prevented from making his "full answer and defence" (Cr. Code sec. 715), the magistrate's bona fide exercise of discretion cannot be reviewed. [*R. v. Irwing*, 14 Can. Cr. Cas. 489, referred to.]

Rex v. Tally, 21 D.L.R. 651, 23 Can. Cr. Cas. 449, 8 A.L.R. 453, 7 W.W.R. 1178, 30 W.L.R. 396.

II. Grounds for.

(§ II—5)—TO PRODUCE EXPERT TESTIMONY AS TO FUNCTION OF DYNAMITE—CAUSE OF EXPLOSION.

It is a proper exercise of discretion in refusing to adjourn a trial for the purpose of enabling a defendant, who had been unaware of the turning point in a case as to the cause of an explosion, to obtain expert testimony as to the action of dynamite, where the evidence at the trial shews that the injuries were caused by contact with an unexploded hole, in contravention of statutory regulations, and not with loose powder in the muck.

Doyle v. Foley-O'Brien Ltd., 22 D.L.R. 872, 34 O.L.R. 42, 8 O.W.N. 362.

[Affirmed by Can. Sup. Ct., Dec. 29, 1915.]

III. Affidavits.

(§ III—10) — THIRD-PARTY PROCEDURE — AFFIDAVIT OF MERITS.

The filing of an affidavit of merits is a condition precedent to the postponement of the hearing of a defendant's application for an order for directions under O. XVI., r. 52, at the instance of a third party, in order to cross-examine a plaintiff on his affidavits.

Patterson v. Hodges, 20 B.C.R. 598.

IV. Effect of admission.

(See previous Annual Digests.)

CONTRACTORS.

Liability for negligence of, see Master and Servant.

Building contracts, see Contracts, II D.

CONTRACTS.

- I. NATURE; FORM AND REQUISITES.
 - A. In general.
 - B. Implied agreement.
 - C. Consideration.
 - D. Meeting of minds; definiteness; offer and acceptance.
 - E. Formal requisites; Statute of Frauds.
 - F. Incorporating extrinsic document.
 - G. Merger.
- II. CONSTRUCTION.
 - A. In general.
 - B. Entirety.
 - C. Time.
 - D. Particular words, phrases and cases.
- III. VALIDITY AND EFFECT.
 - A. In general.
 - B. Illegal by express provision.
 - C. Public policy.
 - D. Gambling and wager contracts.
 - E. In restraint of trade.
 - F. Ratification; validating; holding out as agent.
 - G. Remedies; proceeds of unlawful contract.
- IV. PERFORMANCE; BREACH.
 - A. In general.
 - B. Excuse for failure of performance.
 - C. Incomplete performance; sufficiency of performance.
 - D. Condition; certificate of performance.
 - E. Breach and its effect.
 - F. Time.
- V. CHANGE OR EXTINGUISHMENT.
 - A. In general.
 - B. Termination.
 - C. Rescission; cancellation.
- VI. ACTIONS; LIABILITIES.
 - A. In general.
 - B. Defences.
- VII. PUBLIC CONTRACTS.
 - A. In general.
 - B. Advertisements and bids; letting.
- VIII. WRONGFUL INTERFERENCE WITH.

Rights of third person to sue on, see Parties, I.

Of corporations generally, see Corporations and Companies; Municipal Corporations; Associations.

Mistake as affecting, see Mistake.

Relief from penalties or forfeitures, see Forfeiture.

Assignment of, see Assignment.

Limitation of liability, see Carriers, II.

As to covenants generally, see Covenants and Conditions.

Measure of damages for breach, see Damages.

Admissibility of parol evidence as to, see Evidence, VI.

Of guaranty, see Guaranty; Bonds; Principal and Surety.

Power of married woman to contract, see Husband and Wife.

By incompetent persons, see Incompetent Persons, II.

Of infants, see Infants.

Injunction to protect contract rights, see Injunction, I.

Of insurance, see Insurance.

As to when Statute of Limitations begins to run, see Limitations of Actions, II.

As to mortgages, see Mortgage.

Municipal contracts, see Municipal Corporations, II.

For partnership, see Partnership.

By agent, see Principal and Agent; Brokers.

Registration requirements, see Records and Registry Laws; Bills of Sale; Chattel Mortgage; Land Titles; Deeds; Mortgage.

Of sale of goods, see Sale.

Specific performance of, see Specific Performance.

For purchase of land, see Vendor and Purchaser; Land Titles.

Effect of war, contracts with alien enemies, see Aliens.

As affected by moratorium, see Moratorium.

Annotations.

How affected by moratorium: 22 D.L.R. 865.

Effect of war on contracts with alien enemies: 23 D.L.R. 375.

Building contracts; architect's duty to employer: 14 D.L.R. 402.

Extras in building contracts: 14 D.L.R. 740.

Failure of consideration; recovery of consideration by party in default: 8 D.L.R. 157.

Failure of contractor to complete work on building contract: 1 D.L.R. 9.

Illegality as affecting remedies; relief: 11 D.L.R. 195.

Money had and received; consideration; failure of; loan under abortive scheme: 9 D.L.R. 346.

Oral contract; Statute of Frauds; signature; effect of admission in pleading: 2 D.L.R. 636.

Part performance; acts of possession and the Statute of Frauds: 2 D.L.R. 143.

Part performance excluding the Statute of Frauds: 17 D.L.R. 534.

Restrictions in agreement for sale as to user of land: 7 D.L.R. 614.

Statute of Frauds; signature of a party when followed by words shewing him to be an agent: 2 D.L.R. 99.

Stipulation as to engineer's decision; disqualification: 16 D.L.R. 441.

Time; when time of essence of contract; equitable relief from forfeiture: 2 D.L.R. 464.

Rescission for misrepresentation; Waiver: 21 D.L.R. 329.

I. Nature; form and requisites.

C. CONSIDERATION.

(§ I C 2—29)—SUBSCRIPTION FOR CHARITABLE PURPOSE.

A written promise to contribute a certain

sum of money towards the erection of a building for the Young Men's Christian Association, in reliance of which advances have been made and liabilities incurred, forms a valid and binding contract which cannot thereafter be revoked by the promisor, and is enforceable against him on behalf of the association. [Re Hudson, 54 L.J. Ch. 811, distinguished; Williams v. Hales, 8 N.Z.L.R. 100; Hammond v. Small, 16 U.C.Q.B. 371; Thomas v. Grace, 15 U.C. C.P. 462; Anderson v. Kilborn, 22 Gr. 385; Berkeley Church v. Stevens, 37 U.C.Q.B. 9, applied.]

Sargent v. Nicholson, 25 D.L.R. 638, 9 W.W.R. 883.

(§ I C 2—37)—FORBEARANCE TO SET ASIDE SALE.

A forbearance from proceeding to set aside a judicial sale of land is sufficient consideration to sustain a promise by the highest bidder to pay the difference between what the land will bring at a future sale and what he paid for it.

Leslie v. Stevenson, 24 D.L.R. 544, 34 O.L.R. 473, 9 O.W.N. 82, varying 23 D.L.R. 776, 34 O.L.R. 93.

D. MEETING OF MINDS; DEFINITENESS; OFFER AND ACCEPTANCE.

(§ I D 1—45)—MISTAKE—REFORMATION—NECESSARY PROOF.

To justify reformation on the ground of mistake, proof must be clear and convincing and upon testimony that is unexceptionable both with regard to the agreement actually made by the parties and the mutuality of the mistake from which the different agreement was inserted in the document sought to be reformed. [Irnham v. Child, 1 Bro. C.C. 92; Green v. Stone, 54 N.J.Eq. 399, approved.]

Provincial Fox v. Tennant, 21 D.L.R. 236, 48 N.S.R. 555, reversing 18 D.L.R. 389.

(§ I D 4—60)—OFFER AND ACCEPTANCE—REASONABLE TIME—COUNTER-OFFER—ACCEPTANCE BY TELEGRAM—SALE OF BANK SHARES.

Manning v. Carrique, 25 D.L.R. 840, 34 O.L.R. 453, 9 O.W.N. 61.

(§ I D 4—60)—LAND OPTIONS—REVOCATION AND ACCEPTANCE.

An agreement for sale or option which contains no time limit, and is made for no consideration, may be revoked by the owner within a reasonable delay. The acceptance of such agreement by a real estate agent after receipt of a letter from the owner dated the preceding day revoking the agreement is not sufficient. To be valid the acceptance should be notified to the vendor before his revocation.

Langevin v. Duval, 47 Que. S.C. 511.

(§ I D 4—62)—LAND OPTIONS—SUFFICIENCY OF ACCEPTANCE.

Although an offer to purchase an immoveable is not accepted in writing, the

fact that the vendor attends at a notary's office to execute the deed of sale of the property constitutes a sufficient acceptance; but such acceptance will be considered insufficient if the draft of the deed of sale contains conditions different from those in the agreement of sale, and the purchaser may then withdraw his offer.

Rivet v. Anctil, 47 Que. S.C. 240.

E. FORMAL REQUISITES; STATUTE OF FRAUDS.

(§ I E 1—65)—SALE OF GOODS—RECEIPT AND ACCEPTANCE.

The receipt of a shipment of goods from the carrier and taken into the buyer's warehouse where they are examined and rejected, constitutes an actual receipt and acceptance sufficient to take the transaction out of the Statute of Frauds. [Page v. Morgan, 15 Q.B.D. 228; Taylor v. Smith, [1893] 2 Q.B. 65, followed.]

Thames Canning Co. v. Eckardt, 23 D.L.R. 805, 34 O.L.R. 72, 8 O.W.N. 395.

(§ I E 1—65)—SALE OF GOODS—DELIVERY—ACCEPTANCE.

To satisfy the terms of art. 1235 C.C., which provides that in all commercial matters no action can be maintained against a person without an agreement in writing signed by him for sale of the effects unless the purchaser has accepted or received a part of them, it is not required that the purchaser should accept delivery; it is sufficient if delivery is made.

Martin v. Galibert, 47 Que. S.C. 181.

(§ I E 1—67)—SALES UPWARDS \$50 AT STOCK EXCHANGE.

The mandate of a broker in stock exchange transactions may be proved by parol evidence; but the sale and purchase of grain under that mandate is considered as goods, and if the sale exceeds the amount of \$50, it must be established by a writing in accordance with art. 1235 C.C., unless admitted by the party charged.

Carruthers v. Schmidt, 24 D.L.R. 729, 24 Que. K.B. 151.

(§ I E 1—67)—SALE OF GOODS—REFUSAL TO ACCEPT—PARTIES NOT AD IDEM—WRITTEN ORDER—QUANTITY NOT SPECIFIED—STATUTE OF FRAUDS—UNTENABLE DEFENCES—COSTS.

Mining Industry Co. v. Godson Contracting Co., 9 O.W.N. 51.

(§ I E 2—70)—STATUTE OF FRAUDS—MONEYS ADVANCED TO COMPANY—ORAL PROMISE OF PRESIDENT TO REPAY—SURETYSHIP.

Brown v. Coleman Development Co., 24 D.L.R. 869, 34 O.L.R. 210, 8 O.W.N. 535.

(§ I E 2—70)—GOODS SUPPLIED TO COMPANY—PERSONAL LIABILITY OF PRESIDENT—UNDERTAKING TO PAY—SUBSTITUTED CONTRACT—EVIDENCE—STATUTE OF FRAUDS—GUARANTEE—PLEADING.

Rolph & Clark Ltd. v. Goldman, 7 O.W.N. 739.

(§ I E 3-75)—PERFORMANCE WITHIN A YEAR—
—AGREEMENT FOR FUTURE PROFITS.

Although a sale of land may not be made for many years, still a parol agreement for the payment by the promisor of the profits realised thereon upon such event happening and based on a forbearance by the promisee from legal proceedings is not within the Statute of Frauds. [Mills v. New Zealand Alford Estate, 34 W.R. 669, 32 Ch. D. 266, followed.]

Leslie v. Stevenson, 23 D.L.R. 776, 34 O.L.R. 93, 8 O.W.N. 421.

[Varied in 24 D.L.R. 544, 34 O.L.R. 473.]

(§ I E 4-80)—INTEREST IN LAND—AGREEMENT FOR FUTURE PROFITS.

A parol agreement to pay the difference between what land will bring at a future sale and what was paid for it does not relate to an interest in land and is not within the Statute of Frauds. [Stuart v. Mott, 23 Can. S.C.R. 153, 384, followed.]

Leslie v. Stevenson, 24 D.L.R. 544, 34 O.L.R. 473, 9 O.W.N. 82, varying 23 D.L.R. 776, 34 O.L.R. 93.

(§ I E 4-80)—INTEREST IN LAND.

A parol agreement to pay to lienholders the difference between what the land will bring at a future sale and what was paid for it, in consideration of proceedings being dropped by the lienholders, does not relate to an interest in land and is not within the Statute of Frauds. [Stuart v. Mott, 23 Can. S.C.R. 153, 384, followed.]

Leslie v. Stevenson, 23 D.L.R. 776, 34 O.L.R. 93, 8 O.W.N. 421.

[Varied in 24 D.L.R. 544, 34 O.L.R. 473.]

(§ I E 4-80)—TRUSTS—PURCHASE OF LANDS BY AGENT.

The trust arising out of a conveyance of land in the name of one occupying the fiduciary position of manager, which was purchased with the funds of the employer, is not within sec. 5 of the Statute of Frauds, R.S.N.S. 1900, ch. 141, as to require a writing, in view of the provision that the statute shall not extend to any trust in land arising or resulting by implication or construction of law.

Miller v. Halifax Power Co., Ltd., 24 D.L.R. 29, 48 N.S.R. 370.

(§ I E 4-87)—LEASES—COLLATERAL AGREEMENTS.

A collateral promise at the time of the execution of a lease of land to heat the leased premises is not within the Statute of Frauds.

Brymer v. Thompson, 23 D.L.R. 840, 34 O.L.R. 194, 8 O.W.N. 527.

[Affirmed in 25 D.L.R. 831, 34 O.L.R. 543.]

(§ I E 4-89)—AGREEMENT BETWEEN FATHER AND SON THAT FARM SHALL BE SON'S AT DEATH OF FATHER—FAILURE TO ESTABLISH—EVIDENCE—CORROBORATION—STATUTE OF FRAUDS—POSSESSION—EJECTMENT—MESNE PROFITS.

Wingrove v. Wingrove, 8 O.W.N. 21, 471.

(§ I E 5-95)—INCOMPLETENESS OF WRITING—ADMISSIBILITY OF PAROL EVIDENCE.

Although a writing appears on its face to constitute a complete contract in itself, it may by oral or other evidence be shewn to constitute only a part of the real contract; the terms of the instrument may be inconsistent with the real agreement which may be proved by oral or other evidence, but the giving of the instrument in that form may be consistent with the true agreement. [Eaton v. Crooks, 3 A.L.R. 1, applied.]

Brocklebank v. Barter, 22 D.L.R. 209, 8 A.L.R. 262, 30 W.L.R. 159.

(§ I E 5-97)—PURCHASE OF RAILWAY BONDS—BROKER BECOMING PURCHASER—CORRESPONDENCE—ADMISSIBILITY—MEMORANDUM IN WRITING—STATUTE OF FRAUDS—DAMAGES.

McKinnon v. Doran, 25 D.L.R. 787, 34 O.L.R. 403, 9 O.W.N. 43.

[January 19, 1916. Appeal to second Divisional Court, appeal dismissed, Court divided.]

(§ I E 5-105)—DESCRIPTION OF PARTIES—DEFINITENESS.

The description of a contracting party as the "client of, etc.," without specifying the name and with no independent writings to establish the identity, is defective for want of definiteness under the Statute of Frauds, and the contract operates only as an offer on the party to be charged.

Newberry v. Brown, 23 D.L.R. 627, 8 W.W.R. 1283, 32 W.L.R. 118, affirming 20 D.L.R. 896, 20 B.C.R. 483.

(§ I E 5-108)—INTEREST IN LAND—UNDERTAKING TO CONVEY—WRITTEN MEMORANDUM—PROOF OF SIGNATURE—HANDWRITING EXPERTS—STATUTE OF FRAUDS—TRUSTEE—FRAUDULENT BREACH OF TRUST—TAX SALE.

O'Brien v. Moore, 8 O.W.N. 378.

II. Construction.

A. IN GENERAL.

(§ II A-125)—BREED OF FOXES.

It is not to be inferred that a written contract which recites that the vendor company is the "owner of a certain breed of foxes commonly known as blue foxes," and which provides for the sale of two pairs of blue foxes on specified terms, that the sale is one of foxes bred by the plaintiff company and not of foxes which it has purchased. [Provincial Fox Co. v. Tennant, 18 D.L.R. 389, reversed.]

Provincial Fox v. Tennant, 21 D.L.R. 236, 48 N.S.R. 555.

(§ II A-125)—AMBIGUOUS WORDS CONSTRUED AGAINST PARTY USING THEM.

It is a principle recognized on the interpretation of contracts that when the writing is drawn by a party, the doubts and ambiguities found in it are interpreted against him.

Canestrari v. Lecavalier, 47 Que. S.C. 296.

(§ II A-128)—**AMBIGUITY—INTENTION.**

Where a contract is devoid of any ambiguity, its plain provisions must not be defeated merely because the parties have acted upon a mistaken interpretation of its provisions; but where there is an ambiguity the acts of the parties done under it are admissible in evidence as a clue to their intention. [Lewis v. Nicholson, 18 Q.B. 503; North Eastern R. Co. v. Hastings, [1900] A.C. 260, referred to.]

Toronto General Trusts v. Gordon, Mackay & Co., 21 D.L.R. 394, 33 O.L.R. 183, 7 O.W.N. 822.

[Reversed in 22 D.L.R. 904, 34 O.L.R. 101.]

(§ II A-128)—**CONFLICTING CLAUSES—INTENTION OF PARTIES.**

Where in an agreement a clause is susceptible of two interpretations, the one pertaining to the contract and compatible with the mutual intention of the parties, and the other unusual and tending to avoid the undertaking entered into, it is the first which should be adopted.

Browning v. The Masson Co., 24 Que. K.B. 389.

[Appealed to Canada Supreme Court.]

(§ II A-128)—**INTENTION.**

The nature of an agreement should be determined by the intention of the contracting parties as well as by its main objects, taking into account the relations of the parties. It is necessary to follow the terms of the contract which has been actually effected, although in the agreement stipulations are found of the nature of some other contract.

Gallagher v. Confer, 48 Que. S.C. 303.

(§ II A-128)—**SALE OF STOCK AND ASSETS OF COMMERCIAL COMPANY—ASCERTAINMENT OF AMOUNT PAYABLE—AMBIGUITY—SUBSEQUENT CORRESPONDENCE BETWEEN SOLICITORS—MODIFICATION—ESTOPPEL.**

[Toronto General Trusts v. Gordon, Mackay & Co., 21 D.L.R. 394, 33 O.L.R. 183, reversed.]

Toronto General Trusts Co. v. Gordon, Mackay & Co., 22 D.L.R. 904, 34 O.L.R. 101, 8 O.W.N. 469.

(§ II A-131)—**CONTRADICTORY CLAUSES—PRINTED AND WRITTEN.**

If in a contract there is a clause printed and a clause written which contradicts it, the latter should prevail. [See remarks of Demers, J., in the case of Rosconi v. Péladéau, 48 Que. S.C. 356.] Thus, when a mandate for sale of a property contains a printed clause providing that it shall remain in force as long as it is not revoked by a written notice this clause will be non-effective if at the foot of the writing the principal has himself written that the contract will expire at a fixed date.

Rodier v. Meehan, 48 Que. S.C. 397.

D. PARTICULAR WORDS, PHRASES AND CASES.

(§ II D 1-145)—**REMUNERATION—BUSINESS OF "DEFINITE SHAPE"—MEANING OF.**

Where under a contract of hiring it is a term of the contract that the remuneration shall be based on the business which shall have assumed "definite shape" during the term of the contract, a tender for a contract, accompanied by a letter and a marked cheque, where the tender was afterwards accepted, is sufficient proof that the necessary stage of definiteness has been reached.

Whyte v. McTaggart, 22 D.L.R. 8, 31 W.L.R. 654.

(§ II D 1-150)—**COMMERCIAL DEBT—MISE EN DEMEURE.**

When a party to a contract is a merchant the obligation that he assumes in respect to his business is of the nature of a commercial debt and does not call for any mise en demeure.

Union Trust Co. v. Chicoutimi Pulp & Wood Co., 47 Que. S.C. 524.

(§ II D 1-150)—**SUPPLY OF COAL BY BROKERS TO RETAILERS—PRICES MENTIONED IN CONTRACT—SUBSEQUENT VARIATION—EVIDENCE—ONUS—CONSIDERATION—ACCOUNT—CREDITS—ESTOPPEL—COUNTERCLAIM—FINDINGS OF TRIAL JUDGE—REVERSAL ON APPEAL.**

Kilbuck Coal Co. v. Turner & Robinson, 7 O.W.N. 673.

(§ II D 1-150)—**AGREEMENT OR LEASE—WATER POWER—BREACH OF COVENANTS—FORFEITURE—POSSESSION—COUNTERCLAIM—RENT—FORMER ACTION—DAMAGES—REFERENCE—AMENDMENT—COSTS.**

Morrisburg (Village) v. Sharkey, 7 O.W.N. 728.

(§ II D 1-156)—**FORECLOSURE SALE—THREATENING TO SET ASIDE—AGREEMENT TO PAY PROFIT AT RE-SALE.**

An agreement by a bidder at a foreclosure sale to pay a lienholder threatening to set aside the sale the excess of the cost of the property realized at a re-sale purports an intention that the lienholder should receive only to the extent of the balance remaining due on his claim and not the whole surplus realized upon the re-sale. [Leslie v. Stevenson, 23 D.L.R. 776, 34 O.L.R. 93, varied.]

Leslie v. Stevenson, 24 D.L.R. 544, 34 O.L.R. 473, 9 O.W.N. 82.

(§ II D 1-157)—**AGREEMENT BETWEEN NATURAL GAS COMPANIES—BREACH—INJUNCTION—COSTS.**

Tilbury Gas. Co. v. Maple City Oil & Gas Co., 7 O.W.N. 786.

(§ II D 2-165)—**SALE OF BRICKYARD—DEFAULT IN PAYMENT—REPOSSESSION BY VENDOR—CONVERSION OF BRICKS—RIGHT TO POSSESSION OF PLANT REPLACING PLANT SOLD—COMPANY PURCHASER—WINDING-UP ORDER—RIGHTS OF LIQUIDATOR—SET-OFF—MORTGAGE DEBENTURES—COSTS.**

Wade v. Crane, 8 O.W.N. 478.

(§ II D 2—170)—SALE OF SAW-MILL—INTEREST IN LAND.

A sale of a saw-mill and machinery, even if it indicates that it is to be removed from the land, constitutes a contract for the sale of an interest in land. [Affirmed by divided Court; *Lavery v. Pursell*, 39 Ch.D. 508, followed.]

McPherson v. U.S. Fidelity & Guaranty Co., 24 D.L.R. 77, 33 O.L.R. 524, 8 O.W.N. 299.

(§ II D 2—170)—SALE OF LAND—ACCEPTANCE—CONDITIONS.

The expression in the acceptance of something which is necessarily a condition of a contract of sale of lands and not of the acceptance does not operate as an added condition nor prevent the agreement being enforceable. [*Chatterley v. Nicholls*, 1 Times L.R. 14, referred to.]

Poirier v. Archambault, 23 Que. K.B. 495. [Affirmed in *Lareau v. Poirier*, 25 D.L.R. 266, 51 Can. S.C.R. 637.]

(§ II D 2—170)—LAND OPTION—ACCEPTANCE—OMISSION OF TIME OF PAYMENT.

The acceptance of an offer for the sale of land at a fixed price, even though coupled with a request for particulars of title, constitutes a complete contract of sale and does not render such request a condition subject to which the offer is accepted; nor will an inadvertent omission of the time at which a second instalment of the purchase price is to become payable, affect the right to specific performance of the contract. [*Poirier v. Archambault*, 23 Que. K.B. 495, affirmed.]

Lareau v. Poirier, 25 D.L.R. 266, 51 Can. S.C.R. 637.

(§ II D 2—170)—SALE OF LAND—MORTGAGE AS PART OF PURCHASE PRICE.

It was held that, under an agreement containing the following clauses: "The vendor agrees to sell to the purchaser the land in question at and for the price and sum of fifteen hundred and eighty-five dollars (\$1,585), payable as follows: Six hundred dollars (\$600) on delivery of these presents; the receipt of which is hereby acknowledged; the balance of nine hundred and eighty-five dollars (\$985) as follows: On the first day of November A.D. 1913 (the figures '1913' were first typewritten '1915,' and the 5 was afterwards changed to '3'). The purchaser agrees to assume and pay a certain mortgage in favour of the Mortgage Company of Canada, numbered 1884, for six hundred dollars and interest. The property to be clear of all encumbrances with the above exception." (This mortgage was payable \$50 each year, and the last payment would have been made in 1915.) The mortgage was to be part of the purchase price of \$1,585.

Todd v. Worthington, 32 W.L.R. 366.

(§ II D 2—170)—SALE OF LAND—UNILATERAL CONTRACT—VALIDITY.

A unilateral agreement for the sale of land

is valid in law, and an actual sale results therefrom from the time the parties have manifested, in any form whatever, their mutual assent.

Langlois v. Charpentier, 47 Que. S.C. 97.

(§ II D 2—170)—SALE OF LAND IN SEVERAL LOTS—DIVISIBILITY.

A contract for sale of nine lots of land is divisible in its performance, especially if it is proved that the vendor can only partially execute his obligation, the provisions of art. 1122 C.C. being in his favour.

Langlois v. Charpentier, 47 Que. S.C. 97.

(§ II D 2—170)—SALE OF LAND—UNCERTAINTY AS TO LAND INTENDED TO BE SOLD—DESCRIPTION—BOUNDARIES—EVIDENCE OF IDENTITY—SMALL ELEMENT OF UNCERTAINTY—DISREGARD BY COURT—STATUTE OF FRAUDS—AUTHORITY OF AGENT—RATIFICATION—SPECIFIC PERFORMANCE.

Donohue v. McCallum, 8 O.W.N. 199.

(§ II D 2—175)—AGREEMENT TO PURCHASE TIMBER BERTHS—SALE OF TIMBER BEFORE PURCHASE—SUSPENSIVE CONDITION.

Where two parties agreed to purchase from the Government certain timber berths at private sale, one furnishing the experience and knowledge, the other the funds, and that no sale could be obtained from the Government, but that later on the same timber was publicly sold by auction, and one of the contracting parties bought them, the other party has no right to claim that the sale falls under the contract, as this later must be considered as a contract under a suspensive condition which has failed.

Rainboth v. O'Brien, 24 Que. K.B. 88.

(§ II D 2—175)—PURCHASE OF PLANT AND BUSINESS—RIGHT OF PURCHASERS TO BENEFIT OF CONTRACT FOR SUPPLY OF MATERIAL—REFUSAL OF CONTRACTORS TO SUPPLY—EVIDENCE—NOVATION—EQUITABLE ASSIGNMENT—STATUTE OF FRAUDS—BREACH OF CONTRACT—DAMAGES—MEASURE OF—SEIZURE OF CHATTELS AND BOOK ACCOUNTS—LOSS OF PROFITS.

Milo Candy Co. v. Browns Ltd., 8 O.W.N. 99.

(§ II D 2—175)—SALE OF GOODS—"MORE OR LESS"—INTERLINEATION—FRAUD—REFORMATION—FINDINGS OF FACT OF TRIAL JUDGE.

Blohm v. Hayes; *Hayes v. Blohm*, 9 O.W.N. 203.

(§ II D 2—178)—SALE OF GOODS—"AT FACTORY COST"—"OVERHEAD CHARGES"—ROYALTIES—LIST PRICE IN EXCESS OF ACTUAL COST—REFUND OF EXCESS—EVIDENCE—ONUS.

Gramm Motor Truck Co. v. Gramm Motor Truck Co., 8 O.W.N. 121.

(§ II D 2—178)—SUPPLY OF ELECTRIC POWER—RATE OF PAYMENT.

Toronto Electric Light v. Interurban Electric Co., 8 O.W.N. 272.

(§ II D 2—179)—SALE OF COMPANY SHARES AND MONEY CLAIM—TERMS OF PAYMENT—PROMISSORY NOTE—WRITTEN AGREEMENT—VARIATION BY ORAL AGREEMENT—FINDINGS OF FACT OF TRIAL JUDGE.

Crocker v. Galusha, 8 O.W.N. 610.

(§ II D 4—185)—AGREEMENT TO DRILL FOR OIL—COVENANT THAT EQUIPMENT FREE FROM LIENS AND CLAIMS—BREACH—RIGHT TO SEIZURE.

The plaintiff and the defendant entered into an agreement whereby the plaintiff was to bore for oil for the defendant at a defined rate. The defendant agreed to pay \$5,000 on the execution of the agreement and \$5,000 when the drilling equipment was on the ground, which sums were to be in payment of the work thereafter done. The first \$5,000 was paid. The agreement provided: "The contractor hereby covenants to place their equipment, material, tools and appliances on the ground free of debt and of all and every lien and encumbrance, and to so keep and maintain the said equipment, material tools and appliances until the completion of this contract, and not to sell the same until this contract has been performed in every respect by the contractor. It is further agreed that if the contractor abandons the work before the completion of either well to the depth of twenty-five hundred feet as provided in this contract, or fails in any respect in the substantial performance of any of the agreements herein contained, the company shall have the right forthwith and without notice by any officer or agent of the company to seize the drilling equipment, material, tools and appliances owned by the contractor on the well site and to complete the well." After placing the equipment on the ground the plaintiff demanded the payment of the second \$5,000. There was a balance of \$4,045 of the purchase price of the machinery still unpaid and on that account the defendant's manager objected to pay the \$5,000 due by it. An order for the unpaid balance was given to the sellers by arrangement with them upon the defendant, and an affidavit shewing that the machinery was paid for in full was made by the plaintiff's manager and taken to the defendant's manager with an order to pay the balance of the \$5,000 into a bank to the credit of the seller. He did not do so, but next day seized all of the equipment, giving notice that the defendant would continue drilling with it. In an action for damages because of the seizure:—Held, that although the plaintiff was indebted for the machinery, there was no lien against the machinery within the meaning of the contract, i.e., there was no charge on the machinery itself, and, moreover, it was only a failure in the substantial performance of the agreement which would have justified the defendant's act, and in this case the machinery was in substance, at least, paid for, by the acceptance of the order on the defendant and, if it was not in reality paid for, the non-payment was because of

the defendant's refusal to do what it was, by the terms of the agreement, bound to do. *Alberta Drilling Co. v. Dome Oil Co.*, 8 A.L.R. 340, 8 W.W.R. 996.

(§ II D 4—185)—WORK AND LABOUR—ITEMS OF ACCOUNT—EVIDENCE.

Cusson Bros. v. King, 8 O.W.N. 298.

(§ II D 4—186)—SUB-CONTRACT—SUB-CONTRACTORS BOUND BY PROVISIONS OF MAIN CONTRACT—ITEMS OF CLAIM AND COUNTER-CLAIM—FINDINGS OF FACT—REFERENCE—COSTS.

Weddell v. Larkin, 8 O.W.N. 499.

(§ II D 4—186)—SCOPE OF SUB-CONTRACT FOR VENTILATING AND HEATING OF BUILDING—TEMPORARY HEATING DURING PROGRESS OF WORK—BREACH OF CONTRACT—DAMAGES.

Braden v. Varlow Foundries Ltd., 8 O.W.N. 575, 9 O.W.N. 93.

(§ II D 4—187)—DEEPENING DRAIN—PLANS AND SPECIFICATIONS—PRICE.

Where a contract for deepening drains provides a price for earth and a much higher price for rock, but in reliance upon the fact that the plans and specifications do not mention any stone in the ground, it is stipulated for a lump sum representing the earth excavation only, he has a right to be paid the price mentioned for the rock if he encounters it in considerable quantities in the execution of the work, although it constitutes an increase in the price agreed upon.

Wilson v. City of Hull, 48 Que. S.C. 238.

(§ II D 4—188)—BUILDING CONTRACT—TIME LIMIT.

Where a building contract renders certain what is intended to be the time limit, the erroneous statement of the time limit in the accompanying specifications has not the effect of altering it.

Westholme Lumber Co. v. St. James Ltd., 21 D.L.R. 549, 21 B.C.R. 100, 8 W.W.R. 122, 30 W.L.R. 781.

[Followed in *Lund v. Vancouver*, 25 D.L.R. 863.]

(§ II D 4—188)—BUILDING CONTRACT—ALTERATIONS.

The power reserved in a building contract to make alterations or additions must be reasonably exercised by the owner. [*Dodd v. Churton*, [1897] 1 Q.B. 562, 66 L.J.Q.B. 477, and *McLeod v. Wilson*, 2 Terr. L.R. 312, referred to; and see Annotation on Building Contracts, 1 D.L.R. 9.]

Westholme Lumber Co. v. St. James Ltd., 21 D.L.R. 549, 21 B.C.R. 100, 8 W.W.R. 122, 30 W.L.R. 781.

[Followed in *Lund v. Vancouver*, 25 D.L.R. 863.]

(§ II D 4—188)—BUILDING CONTRACT—EXTRA WORK—VARIANCE.

The addition of an extra storey to a six-storey building pursuant to a condition of a building contract and in respect to which addition the cost of the extra work was

agreed upon and an extension of time granted by the architect, is not such a variance from the original undertaking as will operate as a waiver by the owner of his right to claim the per diem allowance for the contractor's delay in completion upon the demurrage clause in the contract. [*Clydebank v. Yzquierdo y Castaneda*, [1905] A.C. 6, and *Dodd v. Churton*, [1897] 1 Q.B. 562, 66 L.J.Q.B. 477, referred to.]

Westholme Lumber Co. v. St. James Ltd., 21 D.L.R. 549, 21 B.C.R. 100, 8 W.W.R. 122, 30 W.L.R. 781.

[Followed in *Lund v. Vancouver*, 25 D.L.R. 863.]

(§ II D 4—188)—BUILDING CONTRACT—COST OF MATERIALS.

Although a contract for the construction of a building according to plans and specifications includes the materials, a contract "providing to do the work for the sum of \$1,200, to be paid part when the work is finished and the balance in thirty days, and the materials comprising the artificial stones to be charged to the said owners" comprises only the labour, and leaves the cost of the materials to be paid by the owner.

Canestrari v. Lecavalier, 47 Que. S.C. 296.

(§ II D 4—188)—BUILDING CONTRACT—CONSTRUCTION — WORK TO BE DONE — AMOUNT PAYABLE TO CONTRACTOR—ARBITRATION — AWARD — APPEAL — REMOVAL OF MATERIAL—INTEREST—COSTS.

Re Thames Quarry Co. and R.C. Episcopal Corp., 9 O.W.N. 40.

III. Validity and effect.

B. ILLEGAL BY EXPRESS PROVISION.

(§ III B—195)—SALE OF OIL—STIPULATION AS TO FOREIGN STANDARD MEASURES.

The sale of a quantity of oil is considered to be made according to the Canadian standard measures, and a contract which stipulates that such sale is made subject to the American standard measures is void.

Premier Oil Co. v. Lavigne, 47 Que. S.C. 543.

C. PUBLIC POLICY.

(§ III C 1—215)—BIASING MIND OF PURCHASER—CORRUPT ACT.

An agreement to pay a sum of money for biasing the mind of a prospective purchaser to accept the bargain is a corrupt act and unenforceable. [*Wyburd v. Stanton*, 4 Esp. 179; *Harrington v. Victoria Graving Dock Co.*, 3 Q.B.D. 549, followed.]

Sproule v. Isman, 23 D.L.R. 68, 8 S.L.R. 237, 8 W.W.R. 1133, 31 W.L.R. 776.

(§ III C 1—238)—IMMORAL CONSIDERATION—EFFECT ON TITLE.

If a contract is founded upon an immoral consideration and cannot constitute a title to immovable property, it does not necessarily exclude the intention of the person acquiring it to possess it as owner.

Vézina v. Lafortune, 48 Que. S.C. 254.

(§ III C 1—238)—IMMORAL USE OF PROPERTY —HOUSE OF ILL-FAME.

A contract founded upon a consideration illegal or contrary to public order or good morals is non-effective. There is no right of action for recovery of the price of an immovable to be used as a house of ill-fame when this unlawful and immoral use was the sole consideration and determined the price in excess of the intrinsic value of the immovable.

Noel v. Brunet, 48 Que. S.C. 119.

(§ III C 1—239)—RATIFICATION OF FORGERY —COMPOUNDING CRIME.

The forgery of another's name may be ratified by the party whose name has been attached without his authority unless such ratification involves an agreement to stifle a prosecution. [*Scott v. Bank of New Brunswick*, 23 Can. S.C.R. 277, 283, applied; for previous decisions see 6 D.L.R. 119, 8 D.L.R. 68.]

Re De Blois Estate, 22 D.L.R. 731, 48 N.S.R. 529.

D. GAMBLING AND WAGER CONTRACTS.

(§ III D—272)—DEALINGS ON MARGIN ON GRAIN EXCHANGE—SPECULATIVE OPTIONS —PRIVITIES.

This was an application for leave to appeal to the King in Council from a decision of the Supreme Court of Canada, 16 D.L.R. 855, 49 Can. S.C.R. 595, 6 W.W.R. 1258, in favour of the defendant, which leave was refused.

Richardson v. Beamish, 8 W.W.R. 109.

E. IN RESTRAINT OF TRADE.

(§ III E—282)—AGREEMENT CREATING MONOPOLY—ENHANCING PRICES.

An injunction to restrain the defendant from selling goods of the plaintiffs' manufacture, except at prices mentioned in an agreement between them, was refused, where the stipulations imposed by the vendor-plaintiffs were such as unreasonably to enhance the price to the purchasing public; the element of crime came in and affected the freedom on contract. [*Wampole & Co. v. F. E. Karn Co., Ltd.*, 11 O.L.R. 619, followed; *Elliman Sons & Co. v. Carrington & Son*, [1901] 2 Ch. 275, not followed.]

Stearns v. Avery, 33 O.L.R. 251, 8 O.W.N. 70.

IV. Performance; breach.

A. IN GENERAL.

(§ IV A—315)—BREACH—DISCLOSING TERMS.

Parties to a joint venture owe an obligation to each other not to do any act which will prevent or render less probable the contingency which will make the venture successful, and the one who throws over the opportunity of himself closing the transaction in which he is to divide the profits with another working in the same interest so as to enable a third party to secure the benefit which is the object of the venture because of

the latter's offer to divide with him may be compelled to pay out of the profits so received to his partner in the venture the amount which the latter would have been entitled to receive had the defendant made the deal himself. [*Inchbald v. Western, etc., Coffee Co.*, 17 C.B.N.S. 733, referred to.] *Cole v. Reed*, 22 D.L.R. 686, 20 B.C.R. 365.

[Affirmed in 52 Can. S.C.R. 176, 9 W.W.R. 1137.]

(§ IV A—315)—AGISTMENT CONTRACT—DEGREE OF CARE.

On a contract of agistment the onus is upon the agister to prove that the death of the pony, which was turned out on his range for food and shelter for the winter season, did not arise by reason of the agister's neglect to use such care as a prudent or careful man would exercise in regard to his own property. [*Phipps v. The New Claridge's Hotel*, 22 Times L.R. 49; *Platt v. Waddington*, 23 O.L.R. 178, referred to.]

Pye v. McClure, 22 D.L.R. 543, 21 B.C.R. 114, 8 W.W.R. 538.

(§ IV A—315)—CONSTRUCTION OF SIGN—COMPLIANCE WITH UNDERWRITERS' RULES.

One who has undertaken to make and set up a sign is not obliged to comply with the rules of the "Canadian Association of the Insurers against Fire," unless he is under such obligation by his contract.

Macey Sign Co. v. Routtenberg, 48 Que. S.C. 346.

(§ IV A—321)—CLAIM FOR PAYMENT FOR WORK DONE—EXTRAS—COUNTERCLAIM—DELAY.

Curley v. Village of New Toronto, 8 O.W.N. 274.

(§ IV A—321)—ERECTION OF BUILDING—ACTION FOR BALANCE OF CONTRACT—PRICE, EXTRAS, AND DAMAGES—COUNTERCLAIM—DISPUTED ITEMS—FINDINGS OF FACT OF TRIAL JUDGE.

McLeod v. Sault Ste. Marie School Board, 8 O.W.N. 569.

B. EXCUSE FOR FAILURE OF PERFORMANCE.

(§ IV B 2—330)—HEATING SYSTEM—WARRANTY—IMPOSSIBILITY OF PERFORMANCE.

Though it may not be possible to lay down a rule as to the length of pipes necessary to produce 70 degrees of heat in a dwelling house seeing that it is a question of fact depending on the circumstances as well as the number and the size of the openings, the situation of the building itself and the arrangement of the rooms, nevertheless, he who undertakes to place a heating apparatus capable of developing 70 degrees of heat in a house that he is well acquainted with or that he has himself examined, cannot relieve himself from liability by pleading that it was impossible to do more than to place in the premises a heating apparatus able in the ordinary conditions to furnish the degree of heat agreed upon.

Roy v. Barbeau, 47 Que. S.C. 395.

C. INCOMPLETE PERFORMANCE; SUFFICIENCY OF PERFORMANCE.

(§ IV C 1—345)—RECOVERY OF WAGES—COMPLETION OF TERM.

Where a farm labourer has hired for the season at a certain sum per month, but the wages are not to be paid until the end of the season, the contract is an entire one, and the employee is bound to complete the term before he can recover any wages. [*Owen v. James*, 4 Terr. L.R. 174, followed; *Mousseau v. Tone*, 6 W.L.R. 117, distinguished.]

La Plante v. Kinnon, 21 D.L.R. 293, 8 S.L.R. 25, 8 W.W.R. 332, 30 W.L.R. 949.

(§ IV C 2—350)—COMPLETION OF BUILDING—SUFFICIENCY.

A contractor whose duty it is to place the brick on woodwork constructed by another, cannot justify the poor execution of his work by pleading that the woodwork was badly done. It is the duty of the contractor in such case to serve a protest on the owner and refuse to carry out his contract unless the owner assumes the risk of it.

Chevalier v. Tompkins, 48 Que. S.C. 53.

(§ IV C 2—350)—BUILDING CONTRACT—INSUFFICIENT PERFORMANCE.

When a contractor sues for the balance of the price of the work done by him, it is presumed that they are entirely completed according to the contract. If they have been improperly done, he is responsible for damages to the proprietor without any other putting in default.

Gagnon v. Maheux, 24 Que. K.B. 129.

(§ IV C 2—350)—COMPLETION OF WORK—SUPPLYING DEFECTS—REFERENCE—REPORT OF REFEREE—APPEALS—COSTS.

Elliott v. Simpson, 8 O.W.N. 208.

(§ IV C 2—350)—RESTORATION OF BUILDING—SERVICES OF ARCHITECT—REMUNERATION—EVIDENCE.

Meredith v. MacFarlane, 9 O.W.N. 160.

(§ IV C 3—356)—CONSTRUCTION OF WORKS—DEFECTS—SEVERAL CONTRACTORS.

A person who accepts a delegation of payment for certain construction work, which he declares in the same document to have been done to his entire satisfaction, cannot afterwards refuse to pay by pleading compensation for defects in the work and the poor quality of the materials furnished, his acceptance of the delegation being equivalent to a promise to pay and to a complete abandonment of every recourse by reason of these works. In the construction of a building when the work is given out by contract and executed by several contractors separately it can also be accepted separately and each contractor is liable only for his own work.

Lalonde v. Austria-Hungarian Sick Benefit Society, 47 Que. S.C. 364.

(§ IV C 3—357)—POSSESSION OF BUILDING AFTER EXAMINATION—WAIVER OF DEFECTS.

When an owner constructs for his lessee

a warehouse according to certain plans and specifications, the latter, after having examined the building, takes possession and sub-lets it without protest, cannot complain that the work was not done in conformity with the conditions agreed upon and claim to be authorized to do the work on default of the owner.

Manion v. Bertrand, 47 Que. S.C. 270.

(§ IV C 3—357)—BUILDING ENCROACHING ON OTHER PROPERTY—WAIVER OF DEFECT.

Where the building contractor, by his own mistake, encroached upon adjoining property with the building, an agreement between the contractor and the owner of the building that the former would procure and furnish to the owner a title to the strip of land encroached upon will, if carried out, operate as a waiver of an objection on that score.

Lecky v. Carman, 22 D.L.R. 225, 7 S.L.R. 360, 30 W.L.R. 409.

(§ IV C 3—357)—ACCEPTANCE OF WORK — OCCUPATION—RIGHT TO PAYMENT.

A contractor for the construction of a house has no right of action for the balance of the price of sale or to demand the execution of the contract by the owner, if the payment was to be made by a mortgage upon the lot built upon unless he has executed the work in a manner sufficiently complete, regular and honest. The habitation by the owner and his lessees of a house built by a contractor is not an acceptance of the latter's work, if such occupation was brought about by force of circumstances to avoid greater damages to the contractor, the owner and his lessees having no other lodgings which they could occupy.

Lalonde v. Fickles, 47 Que. S.C. 257.

D. CONDITION; CERTIFICATE OF PERFORMANCE.

(§ IV D—360)—MUNICIPAL IMPROVEMENTS—CERTIFICATE OF PERFORMANCE.

Where the question of proper work and of due diligence in proceeding with the work to be done for a municipal corporation in making road improvements is left to the decision of the construction engineer under the contract, and upon the contractor's default and due notification of the engineer's decision in respect thereof, the municipality takes the work out of the contractor's hands under a condition of the contract empowering it so to do, the contractor may still be liable to the municipality for the loss incurred by the latter through the failure of the contractor to fulfil his contract, if the option given by the contract for terminating the contractor's work expressly reserves any right of action to which the contractor may be subject from any neglect in not proceeding with the work in accordance with the specifications. [See Annotation on Engineer's Decisions under Construction Contracts, 16 D.L.R. 441; British Glanzstoff Mfg. Co. v. General Accident etc. Corp., [1912] S.C. 591; Marshall v. Mackintosh, 78 L.T. 750, referred to.

Robinson v. Burnaby, 22 D.L.R. 788, 31 W.L.R. 419.

(§ IV D—360)—INSTALLATION OF TELEPHONE SYSTEM—PERFORMANCE—PLANS AND SPECIFICATIONS—CERTIFICATE OF ENGINEER—EXTRA WORK.

Reid v. Pipestone, 23 D.L.R. 884, 32 W.L.R. 161.

(§ IV D—360)—CONSTRUCTION OF FAIR GROUNDS—CERTIFICATE OF PERFORMANCE—WORKMANSHIP—PUTTING IN FLOOR PREVIOUS TO ROOF—EXTRA WORK—DEMURRAGE—PENALTY OR LIQUIDATED DAMAGES.

Lund v. Vancouver Exhibition Assoc., 25 D.L.R. 863, 9 W.W.R. 556, 32 W.L.R. 845.

(§ IV D—361)—EXTRA WORK AND VARIATIONS—NEW PLANS—REJECTION.

A condition in a building contract entitling the owner to vary, by way of extra work or omission, from the plans or specifications, justifies the contractor from proceeding with variations of extra work radically different from the original plans, and upon the termination of the contract for such refusal, he will be entitled to recover damages for the breach, or upon a quantum meruit for work performed and materials furnished. [Rex v. Peto, 1 Y. & J. 37, 52, followed.]

Ramsay v. Board of School Trustees, 24 D.L.R. 133, 8 W.W.R. 1328, 32 W.L.R. 77.

(§ IV D—363)—CERTIFICATE OF PERFORMANCE—CONCLUSIVENESS.

Where the builder and the architect knew when a progress certificate was being given by the latter that there was nothing due from the owner and that more than the entire value of the work up to that time had already been paid, the architect's certificate is not binding between the builder and the owner. [Smallwood v. Powell, 1 O.W.N. 1025, followed; Hickman v. Roberts, [1913] A.C. 229, referred to.]

Price v. Forbes, 23 D.L.R. 532, 33 O.L.R. 136, 7 O.W.N. 712.

(§ IV D—363)—CERTIFICATE OF PERFORMANCE—CONCLUSIVENESS—BAD WORKMANSHIP.

Where it is a term of the building contract that payment on any certificate granted by the architect is not to exonerate the contractor from liability for bad material or bad workmanship, such defects are likewise available in defence of an action brought by the contractor to enforce payment of the amount certified by the architect.

Price v. Forbes, 23 D.L.R. 532, 33 O.L.R. 136, 7 O.W.N. 712.

(§ IV D—363)—RAILWAY CONSTRUCTION—ESTIMATE OF ENGINEER EMPLOYED BY ANOTHER COMPANY—CONCLUSIVENESS.

The Canadian Northern Pacific R. Co. contracted with the Northern Construction Co. and Patrick Welsh for the construction of their roadbed between Inkitsaph Creek and Lytton. The Construction Company then sub-contracted to Griffin & Welch, who

again sub-contracted to the plaintiffs. The final contract with the plaintiffs provided that the final estimate of the engineers of the Northern Construction Co. as to the quantity and classification of the plaintiffs' work should be binding on the parties. The engineers who made the final estimate were in fact in the employ of the Canadian Northern Pacific R. Co., and had no connection in any way with the Northern Construction Co. As the work progressed, the plaintiffs were paid from time to time on the estimates of these engineers. In an action for the recovery of the balance due under the contract, it was held by the trial Judge that the plaintiffs, by their own action, were estopped from setting up that the engineers were not the engineers of the Northern Construction Co., and were bound by their final certificate as to the quantity and classification of the work:—Held, on appeal (reversing the decision of Hunter, C.J.B.C.), that the plaintiffs are only bound by the estimate of the engineers of the Northern Construction Co., and the engineers who gave the final certificate as to the work not being in the employ of that company, the plaintiffs were entitled to a new trial.

Spadafora v. Griffin & Welch, 20 B.C.R. 475.

E. BREACH AND ITS EFFECT.

(§ IV E—365) — PERFORMANCE BY PARTY SEEKING REMEDY.

In bilateral contracts if one of the parties to the contract wishes to take advantage of non-performance by the other he should first shew that he himself is in a position to execute the contract; in the same way the party who complains of fault on the part of the other should first shew that he himself is not in fault.

Cyr v. Lecours, 47 Que. S.C. 86.

(§ IV E—365)—AGREEMENTS FOR SUPPLY OF ROOFING MATERIAL AND CONSTRUCTION AND PLACING OF ROOF—DEFECTIVE MATERIAL — DEFECTIVE WORKMANSHIP — BREACH OF CONTRACT—GUARANTY—DAMAGES—COSTS.

Canadian Malleable Iron Co. v. Asbestos Manuf. Co., &c., 7 O.W.N. 787.

(§ IV E—365)—AGREEMENT TO BUILD VESSEL—DISPUTE AS TO TERMS—FINDING OF JURY—PROMISED SPEED NOT ATTAINED—BREACH OF CONTRACT—RETURN OF MONEY PAID—DAMAGES.

Donovan v. Chatham Bridge Co., 8 O.W.N. 235.

(§ IV E—366)—AGREEMENT TO TAN SKINS—LOSS BY DESTRUCTION AND SEIZURE.

The defendant agreed with the plaintiff to tan 1,000 skins (sheerlings). Eleven bundles were tanned and returned. The other skins were not returned; and, after being kept for a long time, some were burned by the defendant as having deteriorated, and the balance were taken out of the possession of

the defendant by one of his creditors. Subsequently the plaintiff brought an action claiming that the skins returned were not the skins delivered to the defendant, and for non-performance of the agreement to tan. The trial Judge held on the facts, that the skins returned were those received by the defendants, but gave judgment for the plaintiff for the price of the skins not returned with County Court costs without a set-off.

Pinx v. Grouch, 31 W.L.R. 961.

F. TIME.

(§ IV F—370)—YEARLY TELEPHONE CONTRACT — INSTALMENT PAYABLE QUARTERLY — DEFAULT.

The regular form of contract in use by the Bell Telephone Company is a contract for one year, with instalments payable quarterly, and on default of payment of any instalment the company may remove the instrument and collect the amount owing for the balance of the year, and a customer will not be relieved from the contract on the ground that he did not read the conditions and did not receive a copy of the contract.

Bell Telephone Co. v. Duchesne, 21 D.L.R. 822.

V. Change or extinguishment.

A. IN GENERAL.

(§ V A—381) — ABANDONMENT — PRESUMPTION AS TO—LONG DELAY.

Although abandonment of an acquired right is not easily presumed, a long period of inaction on the part of a claimant in circumstances in which inaction tends to confirm the version of adversary, whilst, if his own version were the true one, he would have had reason to have acted and spoken, affords a strong support to the pretension of the adversary.

Rainboth v. O'Brien, 24 Que. K.B. 88.

B. TERMINATION.

(§ V B—388a)—RIGHT TO TERMINATE BUILDING CONTRACT—DISMISSAL OF CONTRACTOR — JUSTIFICATION — FORCIBLE REMOVAL FROM PREMISES—RIGHTS OF BUILDING OWNER—TERMINATION OF LICENSE.

McInnis v. Public School Board, 9 O.W.N. 281.

C. RESCISSION; CANCELLATION.

(§ V C 1—390)—WHAT CONSTITUTES CANCELLATION.

Where a contract has been made for the construction of three machines a letter containing the words, "I do not wish you to deliver any more as we will have to refuse same until they have been satisfactorily demonstrated as being able to do the work contracted for," is not a cancellation of the contract, but a suspension of delivery until a demonstration is had.

Mechanical Equipment Co. v. Butler, 21 D.L.R. 714, 47 Que. S.C. 478.

(§ V C 1—390)—CANCELLATION IN PART.

Where one contract has been made for the construction of three machines the purchaser cannot cancel it as to part and retain it as to part, but must either cancel or retain the entire contract.

Mechanical Equipment Co. v. Butler, 21 D.L.R. 714, 47 Que. S.C. 478.

(§ V C 1—390)—ACTION FOR.

The commencement of an action for rescission is a sufficient repudiation of the contract for sale of lands. [*Reeve v. Mullen*, 14 D.L.R. 345, followed.]

Krom v. Kaiser, 21 D.L.R. 700, 8 A.L.R. 287, 8 W.W.R. 239, 31 W.L.R. 742, reversing 18 D.L.R. 226, 7 A.L.R. 467.

(§ V C 1—390)—MISREPRESENTATION—MATERIALITY.

The test of a material inducement on a claim to rescind a contract for misrepresentation is not whether the buyer would have acted differently if the misrepresentation had not been made, but whether he might have done so; it is sufficient to prove that in the ordinary course of events the natural and probable effect of the misrepresentation was to influence the mind of a normal representee in the manner alleged.

Young v. Smith, 21 D.L.R. 97, 8 A.L.R. 256, 7 W.W.R. 1355, 30 W.L.R. 642.

(§ V C 1—390)—FRAUD AND MISREPRESENTATION—RIGHTS OF ASSIGNEES—REPAYMENT.

Rescission of a contract for sale of lands may be granted on the ground of fraud and misrepresentation, although the purchaser seeking the rescission had assigned the contract, if the assignees are parties to the action and therein repudiated the contract; and if it appears that the money paid to the vendor was in fact the money of such assignees with whom the original purchaser had contracted in advance of his own agreement to purchase, the Court may in such action in which all parties are before it, direct repayment of such moneys to be made direct to the assignees. [*Medcalf v. Oshawa Lands and Investments Ltd.*, 15 D.L.R. 745, referred to.]

Oshawa Lands v. Newsom, 21 D.L.R. 838, 8 O.W.N. 260.

(§ V C 1—390)—FRAUD—RETURN OF MONEY PAID.

Acres v. Consolidated Investments, 8 O.W.N. 193; *Wyatt v. Consolidated Investments*, 8 O.W.N. 194.

(§ V C 1—390)—ACTION FOR CANCELLATION—FAILURE OF PROOF—COSTS.

Erindale Power Co. v. Interurban Electric Co. (No. 2), 9 O.W.N. 24.

(§ V C 2—395)—ACTION BY ASSIGNEE.

The effect of sec. 101 of the Land Titles Act (Alta.) is to make the assignment of the purchaser's rights under a written contract for the sale of land effectual at once even without notice to the vendor, subject to the

proviso that any rights at law or in equity acquired under the agreement by the vendor before he receives notice shall not be prejudiced by the assignment; an action by a purchaser's assignee against the vendor to declare the contract rescinded and for a return of the money paid thereunder is not subject to the limitations of the Judicature Ordinance, 1907, Alta., ch. 5, sec. 7, sub-sec. 3, as to a preliminary written notice of assignment of a chose in action. [*Armstrong v. Marshall*, 19 D.L.R. 183, disapproved; *Torkington v. Magee*, [1902] 2 K.B. 427; *McNiven v. Piggott*, 19 D.L.R. 846, referred to.]

Armstrong v. Marshall, 22 D.L.R. 51, 8 A.L.R. 449, 8 W.W.R. 300.

(§ V C 2—397)—RESTORING BENEFITS.

The general rule that in order to entitle a purchaser of property to rescind a voidable contract against the vendor, such purchaser must be in a position to offer back intact the subject-matter of the contract does not apply where such subject-matter has become deteriorated solely by the fault of the vendor himself. [*Sager v. Manitoba Windmill Co.*, 13 D.L.R. 203, 16 D.L.R. 577, 7 S.L.R. 51, affirmed; *Clough v. L. & N.W.R. Co.*, L.R. 7 Ex. 26, 41 L.J. Ex. 17, applied.]

Sager v. Manitoba Windmill & Pump Co., 23 D.L.R. 556, 7 W.W.R. 1213.

(§ V C 3—402)—MISREPRESENTATION.

Both materiality and inducement are questions of fact on a claim to rescind a contract for misrepresentation. [*Young v. McMillan*, 40 N.S.R. 52, considered.]

Young v. Smith, 21 D.L.R. 97, 8 A.L.R. 256, 7 W.W.R. 1355, 30 W.L.R. 642.

(§ V C 3—402)—MISREPRESENTATIONS—MATERIALITY.

In order to succeed on a claim to rescind a contract for misrepresentation or to obtain damages as an alternative, it must be shewn that the statement complained of was untrue and was made by the vendor with knowledge of its falsity or with such recklessness as to amount to moral guilt, and that the statement was in regard to a material fact and was an inducing cause leading the purchaser to enter into the contract.

Langley v. Hammond, 22 D.L.R. 42, 21 B.C.R. 175.

(§ V C 3—402)—MISREPRESENTATION—WAIVER.

The right to set aside a contract for misrepresentation by the other party which was unintentional and did not amount to fraud, may be waived or released by payments made thereon after the untruth of the misrepresentation had been clearly revealed. [*Re Bank of Hindustan*, 42 L.J. Ch. 771, applied; *Morse v. Royal*, 12 Ves. 373, and *Moxon v. Payne*, L.R. 8 Ch. 881, distinguished.]

Brauchle v. Lloyd, 21 D.L.R. 321, 8 A.L.R. 247, 7 W.W.R. 1343, 30 W.L.R. 659.

(§ V C 3-402)—TIMBER LIMITS AND LICENSES — ESTIMATES — MISREPRESENTATIONS — RESCISSION OF AGREEMENT—COUNTERCLAIMS.

Cromwell v. Morris, 23 D.L.R. 888, 9 W.W.R. 35, 32 W.L.R. 289.

(§ V C 3-402)—FRAUD AND MISREPRESENTATION—MONEY PAID FOR ASSIGNMENT OF INTEREST IN PATENTED INVENTION—FALSE REPRESENTATIONS OF ASSIGNOR'S AGENT—RESCISSION—RETURN OF MONEY PAID—DAMAGES FOR DETENTION.

Street v. Murray, 8 O.W.N. 436, 9 O.W.N. 250.

(§ V C 3-402)—FRAUD AND MISREPRESENTATION—ASSIGNMENT OF INTEREST IN ESTATE IN CONSIDERATION OF ADVANCES—RESCISSION—REPAYMENT OF ADVANCES—COSTS.

Hamilton v. Gallow, 8 O.W.N. 440.

(§ V C 3-403)—ERROR.

He who pleads error in a written contract should demand its rescission; if he does not do so he cannot be relieved from the consequences of his error.

Cyr v. Lecours, 47 Que. S.C. 86.

(§ V C 3-406)—CONVEYANCE OF LAND IN CONSIDERATION OF MARRIAGE—UNDUE INFLUENCE—LACHES.

Under the will of a person who died in June, 1902, the plaintiff became entitled to a life interest, after the expiry of the life interests of her foster parents, in a farm. In July, 1902, the plaintiff, then a woman of mature years, at the solicitation of the defendant, to whom the farm had been devised after the plaintiff's death, and who was the son and one of the executors of the testatrix, signed and sealed a document whereby she covenanted and agreed with the defendant and the other executors of the will that upon her marrying or "leaving the property" she would give up possession of it. The plaintiff was paid nothing. She became engaged to be married in 1906, and was married in 1908, when she left the farm. Her foster mother died in 1913, and her foster father was still alive on April 3, 1902, when this action was begun, to set aside the deed executed by her:—Held, that the plaintiff had, by the evidence given at the trial, satisfied the onus which was upon her of shewing some substantial reason for setting aside her voluntary deed; in view of the fact that she had no independent advice and no opportunity to secure it, and was under the influence of her foster mother, exerted to induce her to execute it, the deed could not, if the plaintiff had come promptly to the Court for relief, have been allowed to stand; but her remedy had been barred by her long-continued acquiescence and laches. [Huguenin v. Baseley, 14 Ves. 273, and Allcard v. Skinner, 36 Ch.D. 145, followed.]

Stonehouse v. Walton, 35 O.L.R. 17, 9 O.W.N. 222.

(§ V C 3-406)—CONVEYANCE OF LAND BY PARENT TO CHILD—RESERVATION OF LIFE ESTATE — EVIDENCE — WANT OF UNDERSTANDING OF GRANTOR—IMPROVIDENCE—UNDUE INFLUENCE—LACK OF INDEPENDENT ADVICE—ESTOPPEL.

Kirton v. Dillman, 8 O.W.N. 429.

(§ V C 3-406)—CONVEYANCE OF LAND BY AGED PERSON—IMPROVIDENCE—ABSENCE OF INDEPENDENT ADVICE—CONSIDERATION—DEED SET ASIDE—MONEYS EXPENDED IN MAINTAINING GRANTOR—ALLOWANCE FOR—COSTS.

Bare v. Bare, 8 O.W.N. 502.

VI. Actions; liabilities.

A. IN GENERAL.

(§ VI A-410)—PERSONAL LIABILITY OF RAILWAY PRESIDENT—FAILURE TO COMPLETE BRANCH LINE—RIGHTS OF BONDHOLDERS.

An agreement whereby a railway president undertakes on behalf of himself and the company to build an extension line in order to secure a township the benefit of competitive freight rates, in consideration that the manufacturers and citizens of the township purchase the railway bonds, renders the president personally liable with the company to the purchasers of the bonds upon their failure to complete the line. [16 D.L.R. 361, 30 O.L.R. 44, affirmed.]

Wood v. Grand Valley R. Co., 22 D.L.R. 614, 51 Can. S.C.R. 233.

(§ VI A-410)—PAYMENT FOR SERVICES—COVENANT — BREACH — DAMAGES — QUANTUM MERUIT—COUNTERCLAIM—INTEREST—COSTS.

Bice v. Harness, 7 O.W.N. 846.

(§ VI A-411) — RIGHT TO REPAYMENT — TREATMENT FOR ALCOHOLISM—FAILURE OF CONSIDERATION.

A person who enters into a contract with an institution, by which the latter undertakes to cure him of indulgence in intoxicating liquors in three days, with the clause that "if at the end of the treatment the said patient is not cured of the drinking habit, the said company undertakes immediately to return to the patient the sum paid," may, even after four months if he is not cured, recover back the amount so paid, the contract and the payments not having been made for valuable consideration.

Laferrière v. Neal Institute, 47 Que. S.C. 105.

B. DEFENCES.

(§ VI B-415)—BUILDING CONTRACT—INSUFFICIENT PERFORMANCE.

Where in an action for the balance of the price for work done under a building contract it is found that the contractor is not entitled to recover because the work was improperly done, the Court, upon the dismissal of the action, will also dismiss a cross-demand for damages resulting from such

non-performance, where the faults thereof are partly chargeable to the proprietor.

Gagnon v. Maheux, 24 Que. K.B. 129.

(§ VI B—415) — ACTION FOR DAMAGES — BREACH OF DRILLING CONTRACT—COUNTERCLAIM FOR WORK DONE AND FOR HAULING OF MATERIAL.

Fidelity Oil & Gas Co. v. Janse Drilling Co., 31 W.L.R. 503.

(§ VI B—415)—ACTION FOR MATERIAL SUPPLIED AND SERVICES RENDERED—COUNTERCLAIM FOR DAMAGES.

Mainland Iron Works v. Empire Lumber, 32 W.L.R. 388.

VII. Public contracts.

(See previous Annual Digests.)

VIII. Wrongful interference with.

(§ VIII—435)—ACTIONABILITY.

An intentional violation of the plaintiff's legal right by an interference with his contractual relations without sufficient justification, founds a good cause of action and damages are recoverable therefor. [Sleuter v. Scott, 16 D.L.R. 659, affirmed; Quinn v. Leatham, [1901] A.C. 495, 70 L.J.P.C. 77; Giblan v. National, [1903] 2 K.B. 608, 72 L.J.K.B. 907, referred to.]

Sleuter v. Scott, 22 D.L.R. 900, 21 B.C.R. 155, 8 W.W.R. 714.

(§ VIII—435) — ECCLESIASTIC PERSUASION TO STOP TRADING.

For a person to persuade another to refrain from doing something which the other may lawfully refrain from doing, such as the forbidding by an ecclesiastic of the members of his church from trading with the plaintiff, is not an actionable wrong, although the plaintiff's trade is injured thereby, if there is no allegation of threats, intimidation, molestation, conspiracy, or other unlawful means. [Allen v. Flood, [1898] A.C. 1; Lyon v. Wilkins, [1899] 1 Ch. 255, applied; Quinn v. Leatham, [1901] A.C. 495; Giblan v. Labourers' Union, [1903] 2 K.B. 600, distinguished. Heinrichs v. Wiens, 21 D.L.R. 68, affirmed.]

Heinrichs v. Wiens, 23 D.L.R. 664, 8 S.L.R. 153, 8 W.W.R. 373, 30 W.L.R. 854.

CONTRADICTION.

Of witness, see Witness.

CONTRIBUTION.

Between partners, see Partnership.
Surety's rights to, see Principal and Surety; Guaranty; Subrogation.

(§ I—3)—JOINT DEFENDANTS—LIABILITY ESTABLISHED AGAINST ONE.

Where circumstances in a negligence action brought against two defendants are such that upon the face of the transaction or occurrence it was reasonable to join both and to seek to make each of them liable, and the plaintiff could not know which one was

at fault, and, in the event, liability is established only against the one who had contended that the other was solely liable, the Court may include in its judgment against the one so found to be liable the plaintiff's costs incurred against the co-defendant and also the costs which the plaintiff is ordered to pay to the successful defendant. [Besterman v. British Motor Co., [1914] 3 K.B. 181, followed.]

Till v. Town of Oakville, 21 D.L.R. 113, 33 O.L.R. 120, 7 O.W.N. 667.

[Followed in Burrows v. G.T.R. Co., 23 D.L.R. 173.]

(§ I—6)—JOINT LAND ADVENTURE—LIABILITY ON GUARANTEES.

There is no right to contribution on the liabilities incurred on guarantees assumed by one of the parties without the assent of the other in a joint venture for the sale of lands upon a basis of an equal sharing in the profits.

Montgomery v. McQueen, 24 D.L.R. 167, 31 W.L.R. 769.

CONTRIBUTORIES.

Liability of shareholders as, see Corporations and Companies.

CONTRIBUTORY NEGLIGENCE.

See Negligence, II; Railways; Carriers; Street Railways; Master and Servant.

Court's instructions as to, see Trial; New Trial.

CONVERSION.

Equitable conversion, see Wills.

Remedy for, see Trover.

CONVICTION.

See Summary Conviction; Certiorari; Criminal Law.

COPYRIGHT.

See also Trade Mark.

(§ I—3)—TITLE OR NAME OF BOOK.

There cannot in general be any copyright in the title or name of a book. [Dictum of James, L.J., in Dick v. Yates, 18 Ch.D. 76, approved.] Under the Canadian Copyright Act, R.S.C. 1906, ch. 70, sec. 4, unless the title itself amounts to a literary, scientific, or artistic work or composition, it cannot form the subject of copyright. In this case, the name of the plaintiff's book, being simply descriptive of the book, was not the subject of copyright. The defendant company had published and was selling a book with a similar name; but it was held, that the public reputation of the plaintiff's book had not been so established as to give him a right to complain of the "passing off" of the defendant company's book as his, even if there were adequate evidence of the "passing off." [Rose v. McLean Publishing Co., 27 O.R. 325, 24 A.R. 240, distinguished.]

McIndoo v. Musson Book Co., 35 O.L.R. 42, 9 O.W.N. 239.

CORPORATIONS AND COMPANIES.

I. NATURE; CREATION; FRANCHISES; GOVERNMENTAL REGULATION.

- A. In general.
- B. Corporate purposes.
- C. De facto corporation.
- D. Names.
- E. Governmental regulation.

II. CONSOLIDATION; REORGANIZATION; TRANSFER OF FRANCHISES.

III. CHARTERS; ARTICLES OF INCORPORATION.

IV. POWERS, LIABILITIES AND OFFICERS.

- A. Rights and powers generally.
- B. Owning stock of other companies.
- C. Mode of corporate action; acts of agents.
- D. Contracts; ultra vires.
- E. Property rights.
- F. Liabilities.
- G. Officers; meetings.
- H. Promoters.

V. CAPITAL; STOCK AND STOCKHOLDERS.

- A. In general; issue of stock.
- B. Subscriptions.
- C. Transfers; lien.
- D. Forged or fraudulent issue.
- E. Rights of shareholders.
- F. Liability of shareholders.
- G. Stockholders' meetings; voting.

VI. DISSOLUTION; FORFEITURE; INSOLVENCY; WINDING-UP.

- A. In general.
- B. Grounds of forfeiture.
- C. Effect on property rights.
- D. Effect on causes of action.
- E. Procedure; power of liquidator.
- F. Insolvency; right and preferences of creditors.

VII. FOREIGN CORPORATIONS; EXTRA PROVINCIAL CORPORATIONS.

- A. In general.
- B. Doing business within province.
- C. Actions by or against.
- D. Winding up; insolvency of foreign corporation.

VIII. CRIMES AND OFFENCES BY CORPORATION.

As to public service corporations, see **Municipal Corporations, Railways, Street Railways, Carriers.**

Receivers for in general, see **Receivers.**

Taxation of generally, see **Taxes.**

Banking, see **Banks.**

Insurance companies, see **Insurance.**

Annotations.

Directors contracting with a joint-stock company: 7 D.L.R. 111.

Franchises; federal and provincial rights to issue; B.N.A. Act: 18 D.L.R. 364.

Powers and duties of auditor: 6 D.L.R. 522.

Receivers; when appointed: 18 D.L.R. 5.

Debentures and Specific performance,: 24 D.L.R. 373.

Share subscription obtained by fraud or misrepresentation: 21 D.L.R. 103.

Effect of war on enemy corporations and firms: 23 D.L.R. 375, 378.

I. Nature; creation; franchises; governmental regulation.

D. NAMES.

(§ I D—15)—REMOVAL OF NAME FROM REGISTER—WHO MAY APPLY FOR RESTORATION—"CREDITOR."

Where the name of a company has been struck off the register a customer of such company who prior to the striking off institutes an action against the same, and seeks not merely for unliquidated damages, but for repayment of a sum certain under an agreement to that effect, is a "creditor" within the meaning of sec. 24 (5) of the Companies Act, so as to be entitled to make an application for the restoration of the name of the company to the register. Held, also, that the company at the time of the striking off was not "carrying on business or in operation" owing to the fact that all its assets had then been sold.

Re **Porter Art & Music Store**, 9 W.W.R. 30.

E. GOVERNMENTAL REGULATION.

(§ I E—19z)—TERRITORIAL LIMITATION AS TO CARRYING ON BUSINESS — PROVINCIAL POWERS—B.N.A. ACT.

A company incorporated by charter under the Ontario Companies Act to carry on the business of mining does not, although the charter contains no express limitation as to the territory in which the company's operations may be carried on, acquire under such charter the capacity or power to carry on a mining business in the Yukon Territory or to receive any licenses or certificates from the executive officers of the Yukon Territory purporting to confer such right upon a provincial corporation incorporated by the province under its restricted powers of incorporation "with provincial objects" under sec. 92 of the British North America Act, 1867. [Companies Reference, 15 D.L.R. 332, 48 Can. S.C.R. 331; **John Deere Plow Co. v. Wharton**, 18 D.L.R. 353, [1915] A.C. 330; **C.P.R. v. Ottawa Fire Ins. Co.**, 39 Can. S.C.R. 405, referred to.]

Bonanza Creek Gold Mining Co. v. The King, 21 D.L.R. 123, 50 Can. S.C.R. 534, 31 W.L.R. 43.

(§ I E—19z)—INVESTIGATION OF OIL COMPANIES.

Ch. 2 of the Statutes of Alberta, 1908, authorizing the appointment of commission for the purpose of inquiries into matters connected with the good government of the province or the conduct of the public business thereof, does not permit any investigations into the private affairs and operations of private oil corporations.

Black Diamond Oil Fields v. Carpenter, Dist. Ct. J., 24 D.L.R. 515, 9 A.L.R. 121, 32 W.L.R. 425, 9 W.W.R. 158.

II. Consolidation; reorganization; transfer of franchises.

(§ II—20)—**TITLE TO SHARES—AMALGAMATION—CONTRACT—NOVATION—FAILURE OF CONSIDERATION—EVIDENCE.**

Marshall v. Dominion Manuf. Ltd., 7 O.W.N. 808, 8 O.W.N. 526.

III. Charters; articles of incorporation.

(§ III—31)—**INCORPORATED RACING ASSOCIATION—DOMINION CHARTER—CONSTRUCTION—POWERS—"OPERATIONS THROUGHOUT THE DOMINION AND ELSEWHERE"—PLACES FOR HOLDING RACE-MEETINGS.**

O'Neill v. London Jockey Club, 8 O.W.N. 602.

(§ III—33)—**INCORRECT STATEMENT OF LIABILITY.**

Where a certificate of incorporation incorrectly states that the liability of the company is specially limited under sec. 63, the Companies Ordinance, the certificate is erroneous to the extent of that statement only and the company has all the usual powers given by the Ordinance or incident to the company's objects.

Alberta Drilling Co. v. Dome Oil Co., 8 A.L.R. 340, 8 W.W.R. 996.

IV. Powers; liabilities and officers.

D. CONTRACTS; ULTRA VIRES.

(§ IV D—60)—**RULES OF INTERPRETATION.**

The rules of interpretation which govern agreements between individuals should be applied in the same manner to corporations, but it is not necessary to attach too much importance to the acts and doings of their employees.

Chars Urbains v. Commissaires du Havre, 24 Que. K.B. 503.

(§ IV D—60)—**MORTGAGE IN AID OF MINING OPERATIONS—CONSIDERATION.**

The discharge of the company's indebtedness and the securing of financial aid to the company for the future may be shewn to be the real consideration for a mortgage given by the company on two of its three stockholders selling out their holdings to the third, although the expressed consideration of the mortgage was the price fixed for such holdings; such mortgage made by a mining company when it had no other means of procuring money for operating is not ultra vires even as to the excess of the expressed consideration above the indebtedness assumed and paid off or cancelled by the arrangement so made by the continuing stockholder. [**Northern Electric v. Cordova Mines**, 31 O.L.R. 221, reversed; **Trevor v. Whitworth**, 12 A.C. 409, and **G.N.W. v. Charlebois**, [1899] A.C. 114, distinguished.]

Hughes v. Northern Electric and Manuf. Co., 21 D.L.R. 358, 50 Can. S.C.R. 626.

(§ IV D—60)—**POWERS OF CEMETERY COMPANY—DISPOSITION OF LOTS FOR NON-BURIAL PURPOSES.**

Land held by a company incorporated under the Cemetery Companies Act, R.S.O. 1887, ch. 175, for burial purposes cannot be disposed of for any other purposes, which powers of disposition cannot be enlarged by subsequent re-incorporation; and any attempted disposition by the corporation of any part of such land for purposes foreign to its original powers is an act ultra vires which may be enjoined by any shareholder.

Smith v. Humbervale Cemetery Co., 22 D.L.R. 773, 33 O.L.R. 452, 8 O.W.N. 202.

(§ IV D 1—65)—**POWERS OF DEVELOPMENT COMPANY—COVENANT TO ESTABLISH RAILWAY STATION.**

A covenant to establish and maintain a railway station is within the corporate powers of a development company "to do any act to increase the value of the property or to enter in any arrangement capable of being conducted so as directly or indirectly to benefit the company," and within the requisite or incidental powers under sec. 29 (3) of the Companies Act (Alta.), particularly where the establishment of such station may be procured from a railway company owing to an identity of management. [**Union Bank v. McKillop**, 16 D.L.R. 701, 30 O.L.R. 87, referred to.]

Norquay v. G.T.P. Town & Dev. Co., 25 D.L.R. 59, 9 W.W.R. 347, 32 W.L.R. 756.

(§ IV D 1—66)—**OSTENSIBLE AUTHORITY OF OFFICER.**

It is not necessary for any person dealing with an officer of a corporation to ascertain the proper steps taken to clothe him with the authority, where it is apparent that he is the agent of the corporation to transact the particular business. [**Vansickler v. McKnight Construction Co.**, 19 D.L.R. 505, 31 O.L.R. 531, affirmed.]

McKnight Construction Co. v. Vansickler, 24 D.L.R. 298, 51 Can. S.C.R. 374.

(§ IV D 1—66)—**CLUB—LIABILITY FOR GOODS ORDERED BY HEAD STEWARD—SEAL.**

An incorporated club cannot disclaim liability for club supplies sold and delivered to it upon the verbal orders of its head steward or manager, although such orders were placed without the knowledge of the principal officers, and no agreement under seal relating thereto has been executed by the corporation.

Gowans-Kent v. Assiniboia Club, 25 D.L.R. 695, 9 W.W.R. 936, 8 S.L.R. 344.

(§ IV D 1—69)—**POWERS AS TO SURETYSHIP.**

Unless expressly within the powers conferred upon it by the Act of incorporation or those arising from necessary implication, a contract of suretyship by an incorporated company guaranteeing the payment to a bank of advances to another company is ultra vires and void. [**Union Bank v. McKillop**, 16 D.L.R. 701, affirming 11 D.L.R. 449, affirmed.]

Union Bank of Canada v. McKillop, 24 D.L.R. 787, 51 Can. S.C.R. 518.

(§ IV D 1—71)—PURCHASE OF LANDS FOR LOTTERY PURPOSES—RIGHTS OF SUBSEQUENT PURCHASERS.

The purchase of land by a real estate company for the purpose of carrying on a lottery scheme is an act ultra vires and will be vacated in favour of a purchaser claiming under a subsequent sale from the original vendor. [Bédard v. Phoenix Land, etc., Co., 8 D.L.R. 686, 43 Que. S.C. 50, affirmed.]

Prevost v. Bédard, 24 D.L.R. 153, 51 Can. S.C.R. 149.

[See also Prevost v. Bédard, 24 D.L.R. 862, 51 Can. S.C.R. 629.]

(§ IV D 1—76)—SALE OF ASSETS—DEBENTURE MORTGAGE—CLAIM AGAINST TRUSTEES—SECURITIES HELD BY BANK—SUBROGATION—EVIDENCE.

Stuart v. Bank of Hamilton, 7 O.W.N. 727.

(§ IV D 1—77a)—CHattel MORTGAGE—INCIDENTAL POWERS.

A chattel mortgage for money lent must be held invalid where the company in whose favour it was given had no power to lend money under its memorandum of association and where the lending could not be classed as an incidental power to the specific objects of the company's incorporation; the company may nevertheless have power to sue for the return of the money. [Ashbury Carriage Co. v. Richie, L.R. 7 H.L. 653, 44 L.J.Ex. 185; A-G. v. Great Eastern, 5 A.C. 473; Osborne Case, 79 L.J. Ch. 93, [1910] A.C. 87, 79 L.J. Ch. 93; A-G. v. Mersey, [1907] A.C. 415; Re Bagley, 80 L.J.K.B. 168; and Carter v. Columbia, 18 D.L.R. 520, referred to.]

Columbia Bitulithic Co. v. Vancouver Lumber Co., 21 D.L.R. 91, 8 W.W.R. 132, 30 W.L.R. 753.

(§ IV D 3—85)—SALE OF BUSINESS PREMISES—SEAL.

A sale of its business premises by an industrial company, unless forbidden by its charter, is valid though not under the corporate seal.

McKnight Construction Co. v. Vansickler, 24 D.L.R. 298, 51 Can. S.C.R. 374, affirming 19 D.L.R. 505, 31 O.L.R. 531.

G. OFFICERS; MEETINGS.

(§ IV G 1—106)—ELECTION OF DIRECTORS—SUFFICIENCY OF QUORUM—DISQUALIFICATION OF MEMBERS—UNPAID CALLS.

Doig v. Mathews, 25 D.L.R. 732, 9 W.W.R. 487.

(§ IV G 2—110)—MEETING OF SHAREHOLDERS—IRREGULARITY.

Where the secretary-treasurer of a company has called a meeting of the shareholders of the company and is seeking to take advantage of resolutions passed at that meeting although it was irregularly held, the company is entitled to take advantage of such irregularity although it could not in-

voke it against third parties acting in good faith.

Courchene v. Viger Park Co., 23 D.L.R. 693, 24 Que. K.B. 97.

(§ IV G 2—110)—POWER OF OFFICER TO INDORSE NOTE.

The authority of an officer of a corporation to indorse a note for the corporation cannot be disputed after the corporation has obtained advances from a bank on the strength of such indorsement.

Canadian Bank of Commerce v. Bellamy, 25 D.L.R. 133, 8 S.L.R. 38, 9 W.W.R. 587, 33 W.L.R. 8.

(§ IV G 2—116)—POWERS OF SECRETARY—TREASURER—INSURANCE CONTRACT.

Where a contract for insurance is not authorized by the board of directors, the promise of the secretary-treasurer to recommend to the corporation the acceptance of certain insurance proposals is not of itself sufficiently definite to create a binding contract as will render the corporation liable thereon.

Douglas v. Eastern Car Co., 25 D.L.R. 481, 49 N.S.R. 208.

(§ IV G 2—116a)—POWERS OF MANAGING DIRECTOR—LEASE.

The managing director of a company incorporated in England under the Companies Consolidation Act, 1908, to whom the company has given power of attorney to do all acts, execute all deeds and instruments as, in his opinion, may be necessary, convenient or expedient in relation to the property and business of the company, has authority to lease the company's salmon cannery and business as a going concern.

Scottish Canadian Canning Co. v. Dickie, 22 D.L.R. 890, 31 W.L.R. 273.

(§ IV G 2—117)—PROVISIONAL DIRECTORS—POWERS AS TO HIRING MEDICAL EXAMINER—TERM.

Provisional directors of a joint stock company have no right to make a contract for hire of services of a medical examiner for the whole duration of the company's existence. Such a contract is void if it is not approved and ratified by the board of directors of the company properly appointed.

Lebel v. Security Life Ins. Co., 47 Que. S.C. 238.

(§ IV G 2—117)—PROVISIONAL DIRECTORS—SECURING STOCK SUBSCRIPTIONS—POWERS TO APPOINT AGENTS—SCOPE OF AGENCY.

Adair v. British Crown, etc., Co., 24 D.L.R. 905, 9 W.W.R. 340, 32 W.L.R. 652.

(§ IV G 3—120)—DIRECTORS—COMPENSATION TO.

Directors have no right to be paid for their services, and cannot pay themselves or each other, or make presents to themselves out of the company's assets, unless authorized so to do by the instrument which regulates the company or by the shareholders at a properly convened meeting.

[Re G. Newman & Co., [1895] 1 Ch. 674, referred to.]

Roray v. Howe Sound, 22 D.L.R. 855, 31 W.L.R. 409.

(§ IV G 3—120)—MUTUAL AID SOCIETY — REMUNERATION OF DIRECTORS—COSTS.

Directors of a mutual aid society should give their services gratuitously, and they have no right to issue paid-up policies to themselves and to vote themselves an indemnity in money in payment for their past and future services. The directors, in committing such illegal acts, have acted as agents and jointly committed a *délit*. In the two capacities they may be jointly and severally condemned to payment of the costs.

Roy v. La Caisse des Familles, 48 Que. S.C. 43.

(§ IV G 3—120) — DIRECTORS — ACCOUNT — REFERENCE — REPORT — SALARIES AND DISBURSEMENTS OF DIRECTORS—VALUE OF PREFERRED SHARES RECEIVED BY DIRECTORS—EVIDENCE—COSTS.

Hyatt v. Allen, 9 O.W.N. 173.

(§ IV G 3—120)—LAND COMPANY—DIRECTOR ACTING AS SALES-AGENT—REMUNERATION—COMMISSIONS — CONSTRUCTION OF AGREEMENT — ACCOUNT — REFERENCE — REPORT—APPEAL—COSTS—DISCRETION.

Home v. M. S. Boehm & Co., 9 O.W.N. 175.

(§ IV G 3—123)—ILLEGAL COMPENSATION TO PRESIDENT—VOTING ISSUE OF STOCK TO ENABLE CONTROL OF MEETING.

Directors cannot vote to their president an indemnity as salary which is not justified, either by services rendered nor by the state of the company's business, in order to permit him to acquire shares which would give him the majority and the control in a shareholders' meeting. Resolutions respecting this indemnity and the issue of shares purchased with the amount of it are void.

Giguère v. Colas, 48 Que. S.C. 198.

(§ IV G 4—125) — DIRECTORS — FIDUCIARY OBLIGATION TOWARDS MINORITY—FULL DISCLOSURE.

When a majority of the directors of a trading company also hold a majority of the company's shares and a resolution is adopted at a directors' meeting that no new business shall be undertaken, there is no fiduciary obligation towards the minority shareholders which prevents the directors from acting as individuals in their own individual interests in accepting business of the same class as the company had been engaged in, of which there was full disclosure to the minority interests and in regard to which a directors' resolution declining the contract and disclaiming any interest in it was confirmed at a shareholders' meeting regularly called. [N.W.T. Co. v. Beatty, 12 A.C. 589, referred to.]

Cook v. Deeks, 21 D.L.R. 497, 33 O.L.R. 209, 8 O.W.N. 7.

[Appeal allowed by Privy Council.]

(§ IV G 4—125)—FIDUCIARY RELATION OF DIRECTORS—BREACH OF TRUST—MISUSE OF COMPANY'S PROPERTY — MATING FOXES.

Pure Canadian Silver Black Fox Co. v. Morrison, 24 D.L.R. 915.

(§ IV G 4—125) — MANAGING DIRECTOR — BREACHES OF TRUST — ACCOUNT — COMPENSATION — INTEREST — COMPOUND INTEREST — CREDITS — CLAIMS FOR COMMISSION — EXPENSES AND DISBURSEMENTS—MASTER'S REPORT—APPEAL.

Saskatchewan Land and Homestead Co. v. Moore, 7 O.W.N. 684, 8 O.W.N. 525.

(§ IV G 4—126)—POWERS OF DIRECTORS — TAKING EXTENSION OF LEASE TO THEIR OWN USE—PROOF—MINUTES BOOK.

Although it may be admitted that the directors of a company cannot by their own act deprive the company of any advantage or do anything to its detriment and prejudice, an extension of a lease belonging to the company may be obtained by the directors personally and for their own benefit, when, at the date of the contract, the company was in liquidation, and had practically refused to accept the extension. The negative acts of a board of directors may be proved by witnesses; it is not obligatory to enter in the minutes book every proposition which the directors refuse to accept or to discuss.

Boston Shoe Co. v. Frank, 48 Que. S.C. 66.

(§ IV G 5—130)—STATUTORY LIABILITY OF DIRECTORS—WAGES—ASSIGNMENT OF.

The personal liability imposed upon directors by sec. 98 of the Companies Act, R.S.O. 1914, ch. 178, for wages due to workmen of the company does not apply to an assignment of wage claims to a storekeeper in pursuance of an agreement with the company for periodical adjustment of such claims for supplies furnished them.

Coveney v. Glendenning, 22 D.L.R. 461, 33 O.L.R. 571, 8 O.W.N. 320.

(§ IV G 5—130) — STATUTORY LIABILITY OF DIRECTORS—TRANSFER OF STOCK TO PERSONS OF INSUFFICIENT MEANS.

In order to relieve directors of the liabilities imposed under sec. 24 of the Companies' Clauses Act, R.S.C. 1886, ch. 118, for allowing a transfer of unpaid stock to a person who is "not apparently of sufficient means" there must be a positive appearance of sufficient means; the directors must not approve a transfer to a person about whom they know nothing.

Re Ontario Fire Ins., 23 D.L.R. 758, 8 W.W.R. 1081, 31 W.L.R. 483.

(§ IV G 5—130) — LIABILITY UNDER MISFEASANCE SUMMONS—DIVERSION OF INVESTMENT FUNDS TO OTHER PURPOSES.

Held upon the facts, that directors of a company were liable upon a misfeasance summons for the non-investment of a cus-

tomer's money obtained through the fraud of one of the directors and use of the same to discharge pressing debts and were liable to pay the money to the liquidator of the company for repayment to the investor.

Re Traders Trust & Bertha Cory, 9 W.W.R. 538, 28 D.L.R. 41.

(§ IV G 5-133)—ILLEGAL DECLARATION OF DIVIDEND—PAYABLE IN STOCK.

A resolution of a board of directors declaring a dividend payable partly in money and partly in stock of the corporation is illegal under sub-sec. 4 of art. 6036 of R.S.Q. 1909, and will be quashed; but the Court will not assume jurisdiction to substitute itself for the company and declare a dividend payable completely in money.

St. Lawrence Furniture Co. v. Binet, 25 D.L.R. 316, 24 Que. K.B. 405.

(§ IV G 5-133)—WINDING-UP — DIRECTORS — MISFEASANCE — DE FACTO DIRECTORS — LIABILITY — PAYMENT OF DIVIDENDS — BONUSES.

Re Owen Sound Lumber Co., 25 D.L.R. 812, 34 O.L.R. 528, 9 O.W.N. 103.

(§ IV G 5-134)—LIABILITY OF SECRETARY-TREASURER — MISREPRESENTATION OF AUTHORITY — INSURANCE.

The secretary-treasurer of a corporation cannot be held personally liable in damages for a misrepresentation of his authority because of a refusal by the corporation to accept insurance proposals submitted to him, the acceptance of which he promised to recommend.

Douglas v. Eastern Car Co., 25 D.L.R. 481, 49 N.S.R. 208.

(§ IV G 5-134)—MISCONDUCT OF DIRECTORS — SECRET PROFITS — MISREPRESENTATIONS.

This was an action for damages for the misconduct of the defendants as directors of the defendant company, for the recovery of secret profits and for damages for misrepresentation. On the facts the plaintiff's action was dismissed.

Kohler v. Stoner, 32 W.L.R. 161.

H. PROMOTERS.

(§ IV H-161)—PROMOTERS AND INCORPORATORS—LIABILITY FOR MISREPRESENTATIONS.

The prospectus is the basis of the subscription for company shares and the company issuing shares upon a subscription contract based upon a prospectus thereby adopts the prospectus although it was issued before the incorporation of the company; but where a person becomes one of the original incorporators there is no ratification by the company of any misrepresentation made by a promoter whereby a person was induced to become one of the incorporators and to join in the petition for the company's charter; each petitioner by signing the memorandum of incorporation becomes bound not only as between himself

and the company, but as between himself and the other persons who may become members. [*Re Metal Constituents Ltd.*, [1902] 1 Ch. 707, followed.]

Buff Pressed Brick Co. v. Ford, 23 D.L.R. 718, 33 O.L.R. 264, 8 O.W.N. 63.

V. Capital; stock and stockholders.

A. IN GENERAL; ISSUE OF STOCK.

(§ V A-165)—DIRECTORS — ISSUE OF NEW SHARES—INVALIDITY—PREVIOUS AGREEMENT TO ALLOT SHARES IN CONSIDERATION OF FINANCIAL AID — AGREEMENT WITH DIRECTOR NOT BINDING ON COMPANY—CONTROL OF COMPANY — ELECTION OF DIRECTORS.

Swayze v. Grobb, 8 O.W.N. 316.

(§ V A-165)—TITLE TO SHARES—CONTRACT — TRUST — PAROL EVIDENCE — COLLATERAL TRANSACTION—COSTS.

McConnell v. Murphy; *Patton v. Murphy*, 7 O.W.N. 812, 8 O.W.N. 409.

(§ V A-167)—CAPITAL STOCK — INCREASE — VOTING.

When the letters patent fix the capital stock at a certain amount and do not include any clause permitting the shareholders to increase such capital and such capital has been increased without the issuing of supplementary letters patent; a resolution voted on by the holders of the additional shares, even although the majority were original shareholders, is illegal and void.

Courchene v. Viger Park Co., 23 D.L.R. 693, 24 Que. K.B. 97.

(§ V A-168)—BONUS STOCK—ILLEGAL ISSUE — EFFECT ON BOND SUBSCRIPTION.

Where a company, as a special inducement to subscribers for its debentures, offers a bonus of common stock, such inducement is an essential and important consideration of the contract; and, therefore, if such issue of stock is null and illegal, the underwriting agreement itself becomes void.

Dorchester Electric Co. v. King; *Same v. Thomson*; *Same v. Industrial Securities Co.*, 24 D.L.R. 373, 48 Que. S.C. 471, 22 Rev. de Jur. 27.

B. SUBSCRIPTIONS.

(§ V B 1-175)—REPUDIATION—NOTICE.

A distinct and unequivocal repudiation of a company share subscription where the subscriber is entitled to repudiate, need not be by the institution of proceedings to set aside his subscription; a notice of repudiation given to the directors may be sufficient for the purposes of a winding-up under the Companies Winding-up Ordinance, 1903, 1st session, ch. 13, if given before the winding-up proceedings had commenced. [*Reese River Silver Mining Co. v. Smith*, L.R. 4 H.L. 64, applied; *Re Scottish Petroleum Co.*, 23 Ch.D. 430 (C.A.), dissented from; *Oakes v. Turquand*, L.R. 2 H.L. 325, discussed; *Re Retailer Merchants Assn.*, 15 D.L.R. 890, overruled.]

Re Western Canada Fire Ins. Co., 22 D.L.R. 19, 8 A.L.R. 348, 7 W.W.R. 1365, 30 W.L.R. 648.

(§ V B 1—175)—RIGHT TO REPUDIATE—LACHES.

The right to repudiate a subscription for shares on account of misrepresentation or because of non-delivery of a copy of the prospectus as required by the Ontario Companies Act (6 Edw. VII. ch. 27, sec. 3), must be exercised promptly and will not be accepted as a defence where there has been unreasonable delay in approving or repudiating.

Morrisburgh & Ottawa Electric R. Co. v. O'Connor, 23 D.L.R. 748, 34 O.L.R. 161, 8 O.W.N. 485.

(§ V B 1—175)—ALLOTMENT—ACCEPTANCE—CONDUCT—DIRECTORS—ACTION FOR CALLS—LIABILITY.

Fort William Commercial Chambers Ltd. v. Braden, 7 O.W.N. 679.

(§ V B 1—175)—INDUCEMENT TO BUY COMPANY SHARES—PROOF OF FRAUD—EVIDENCE—COSTS.

Smith v. Haines, 8 O.W.N. 235.

(§ V B 1—176)—WHEN SUBSCRIPTION BINDING—ALLOTMENT—ASSIGNABILITY.

The subscription for a share in a joint stock company which has not yet been accepted nor allotted does not form a complete contract, but is only an offer or a promise to buy. The subscription is not transferable and can be revoked. There is no privity of contract between the subscriber for a share and the person to whom he has transferred it before acceptance and allotment by the company.

Duclos v. Bilodeau, 47 Que. S.C. 205.

(§ V B 1—176)—SUFFICIENCY OF ACCEPTANCE—PAYMENT.

Generally a shareholder who wishes to purchase shares in a joint stock company does not become shareholder by the offer alone that he makes of the latter; it is necessary that the company should accept this offer. But it is not necessary that the acceptance should be formal; it is sufficient that there be a manifestation of the intention to accept on the part of this company and this acceptance may be legally proved. When a subscription for privileged shares in the capital of a company has been made on the condition that the subscriber would obtain in addition a certain number of common shares it is not necessary for the company, before taking action for the amount subscribed, to make an actual offer of the latter shares and deposit the certificates in Court; it is sufficient for it to declare itself ready to deliver them upon payment. Although generally the subscriber for shares is not obliged to pay for them before being requested, he can nevertheless undertake, in his contract for subscription, to pay at specified dates.

Forget v. Cement Products Co., 24 Que. K.B. 445.

[Appealed to Privy Council.]

(§ V B 1—177)—CONDITIONS TO SUBSCRIPTION.

The effect of sec. 57A of the Companies Ordinance, C.O. 1898, ch. 61, as amended 1909, ch. 5, is to make voidable a subscription for stock obtained by verbal representations to the subscriber where he has not received a copy of the prospectus, such being the effect of the words "no subscription, etc., shall be binding upon the subscriber," which do not imply that the contract shall be absolutely void and incapable of ratification.

Re Western Canada Fire Insur. Co., 22 D.L.R. 19, 8 A.L.R. 348, 7 W.W.R. 1365, 30 W.L.R. 648.

(§ V B 1—178)—CANCELLATION OF STOCK—ILLEGAL ISSUE—WANT OF CONSIDERATION.

Shares belonging to the original subscribers who have applied for and obtained letters patent incorporating the company, cannot be annulled by the Court on the ground that they were obtained illegally and without consideration.

Giguère v. Colas, 48 Que. S.C. 198.

(§ V B 1—178)—RESCISSION—FRAUDULENT PROSPECTUS—MISREPRESENTATION BY AGENT—ESTOPPEL—CONDITION OF MIND AS A FACT—LACHES.

Pioneer Tractor Co. v. Peebles, 8 W.W.R. 632, affirming 18 D.L.R. 477, 7 S.L.R. 322, 7 W.W.R. 124.

(§ V B 2—180)—MODE OF PAYMENT—STATUTORY REQUIREMENTS.

Under the Quebec Companies Act no issue of stock not paid for in cash is legal unless a contract be filed with the Provincial Secretary at or before the issue thereof shewing that payment in a form other than cash had been sanctioned.

Dorchester Electric Co. v. King; Same v. Thomson; Same v. Industrial Securities Co., 24 D.L.R. 373, 48 Que. S.C. 471, 22 Rev. de Jur. 27.

(§ V B 2—180)—WATERED STOCK—ILLEGALITY.

Under the Quebec Companies Act stock issued direct from the treasury of a company without being paid for in cash is watered stock and therefore illegally issued and void, even though it be claimed that such stock represents the increased value of the company's property.

Dorchester Electric Co. v. King; Same v. Thomson; Same v. Industrial Securities Co., 24 D.L.R. 373, 48 Que. S.C. 471, 22 Rev. de Jur. 27.

C. TRANSFERS; LIEN.

(§ V C 1—185)—TRANSFER OF SHARES BY ENDORSEMENT ON CERTIFICATE—FAILURE TO RECORD IN BOOKS OF COMPANY—FRAUD OF TRANSFEROR—RIGHTS OF TRANSFEREE

AGAINST TRUE OWNER—LACHES—MANDAMUS.

Leadlay v. Union Stockyards Co., 8 O.W.N. 516.

(§ V C 1—188)—SALE OF SHARES — DIRECTORS PREVENTING TRANSFER—LIABILITY OF CORPORATION.

A company owes a duty to a shareholder to permit the transfer of his shares, and where its directors wrongfully prevent the transfer, the company is liable for the natural consequences of such breach of duty which in a case where a sale of the shares is prevented is the loss of the sale.

Wolverton v. Black Diamond Oil Fields, 8 A.L.R. 283, 8 W.W.R. 471.

(§ V C 1—191)—RIGHTS OF PLEDGEE.

Sec. 53 of the B.C. Companies Act, 1897, ch. 44 [R.S.B.C. 1911, ch. 39, sec. 40] has no reference to a case where a transfer of shares is made, but applies only where the shares appear to have been pledged as collateral security and where the owner's name and not the name of the pledgee remains on the books of the company as the holder of the shares; it does not enable the company to set off against a dividend a debt due by a person who was a shareholder, but whose transfer of the shares to a bank manager in trust for the bank as collateral security for a loan to such shareholder had been accepted and registered by the company and a new certificate issued in respect thereof in the name of the bank manager; the company might have declined, under its articles (Art. 10, Table A, Companies Act, 1897), to register any transfer of shares made by a member who was indebted to it, but having registered, it must treat the transferee as the owner of dividends thereafter payable. [*Wilson v. B.C. Refining Co.*, 20 D.L.R. 418, reversed.]

Wilson v. B.C. Refining Co., 22 D.L.R. 634, 8 W.W.R. 838, 31 W.L.R. 381.

E. RIGHTS OF SHAREHOLDERS.

(§ V E 1—217)—APPROPRIATION TO SUBSCRIBERS—SALE BY BROKERAGE FIRM.

Where a company is authorized by law to appropriate in commission to subscribers 10% of what it should otherwise have in its treasury as capital derived from subscriptions, and a sale at 7½% discount by a brokerage firm is attacked as illegal, but there is no evidence to shew that the broker is acting for the company, the Court may assume that such method has been adopted under which the broker might lawfully become entitled to the stock which he is agreeing to sell as by himself becoming the original subscriber under an appropriation of 10% commission. (Per Russell, J., and Graham, E.J.).

Borden v. Stanford, 21 D.L.R. 209, 48 N.S.R. 532.

(§ V E 2—220)—ACTION FOR RESCISSION OF SUBSCRIPTION—MISREPRESENTATION.

It is no answer to a shareholder's action

against the company for rescission of the allotment to him of shares, for which he had fully paid, subscribed for upon a fraudulent misrepresentation of the company, for the latter to set up that at the time of action brought the company was in financial difficulties and that the interest of creditors had intervened, if the company has not been placed in liquidation, although an assignee had been appointed under the Sale of Goods in Bulk Act, R.S.B.C., ch. 204, to carry out the sale of its entire stock in trade. [*Oakes v. Turquand*, L.R. 2 H.L. 325; *Tennent v. City of Glasgow Bank*, L.R. 4 A.C. 615, distinguished.]

Fitzherbert v. Dominion Bed Manuf. Co., 23 D.L.R. 125, 8 W.W.R. 743, 21 B.C.R. 226.

(§ V E 2—224)—PROCEEDINGS FOR ILLEGAL APPLICATION OF FUNDS.

Held, on appeal, per Irving and Galliher, J.J.A., that the shareholders holding a majority of the stock issued, having been indorsers of the notes securing the indebtedness of the Victoria Contracting Company, and they having carried a resolution indorsing the action of paying said Company's indebtedness the day before the trial of this action, it was not necessary for the plaintiff to make a formal request in meeting assembled to enable him to obtain a status to bring this action in his own name. Per Martin and McPhillips, J.J.A.: That the plaintiff must first apply to the defendant company to proceed to recover the moneys alleged to be lost before he can bring this action in his own name. The Court being equally divided, the appeal was dismissed.

Johnston v. Carlin, 20 B.C.R. 520.

(§ V E 4—230)—NON-DECLARATION OF DIVIDEND—INVESTIGATION UNDER STATUTE.

The fact that no dividend is declared by a profit-making company is insufficient to warrant an order for an inspection pursuant to sec. 92, ch. 79, of the Revised Statutes of Canada.

Re Sarnia Ranching Co., 8 W.W.R. 697.

F. LIABILITY OF SHAREHOLDERS.

(§ V F 1—236)—APPLICATION FOR SHARES—MEMORANDUM OF AGREEMENT — ACCEPTANCE.

An application for shares in a company to be organized under the Quebec Companies Act and not included in the memorandum of agreement accompanying the petition for incorporation cannot be accepted two years later, so as to make the applicant, who had paid nothing upon them and had not participated in the corporate business, liable for calls where at the time of the pretended acceptance and allotment the company was insolvent and the shares valueless.

Vilandre v. Allie, 22 D.L.R. 577.

(§ V F 1—238)—SHARES—AGREEMENT AS TO PAYMENT—FAILURE TO REGISTER—LEAVE OF COURT TO FILE.

Re Jasper Liquor Co., 23 D.L.R. 894, 31 W.L.R. 719, 8 W.W.R. 1078.

(§ V F 3—258) — CALLS — AUTHORITY OF DIRECTORS — BY-LAW — QUORUM — SUBSCRIBER FOR SHARES — SIGNATURE TO STOCK-AGREEMENT — LIABILITY TO CO-SUBSCRIBERS FOR PROPORTIONATE SHARE OF MONIES PAID BY THEM — PARTNERSHIP — AGENCY — CONDITIONAL SUBSCRIPTION — NON-FULFILMENT OF CONDITION — WAIVER — FINDINGS OF FACT OF TRIAL JUDGE.

Canadian Ohio Motor Car Co. v. Cochran, 7 O.W.N. 693, 8 O.W.N. 242.

(§ V F 3—262) — SUBSCRIPTION OBTAINED BY MISREPRESENTATION.

A representation by the seller of company shares that other shareholders had paid cash for their shares is a material representation.

Young v. Smith, 21 D.L.R. 97, 8 A.L.R. 256, 7 W.W.R. 1355, 30 W.L.R. 642.

(§ V F 3—262) — CONTRIBUTORIES — SUBSCRIPTION OBTAINED BY FALSE REPRESENTATIONS.

Shareholders of a joint stock company in liquidation summoned as contributories cannot relieve themselves from their liability as such to the creditors of the company by establishing that their subscriptions for shares had been obtained by fraud or false representation, or that they were subject to conditions not performed.

St. Roch Hotel Co. v. Barbeau, 48 Que. S.C. 94.

(§ V F 3—263) — CONDITIONAL SUBSCRIPTION — LIABILITY AS CONTRIBUTORY — RIGHT TO REPAYMENT.

An allotment of shares upon a subscription which was subject to a condition that the subscriber, a physician, should be appointed chief medical referee for the company, which has not been fulfilled, nor notice of such allotment given, is illegal, and will, therefore, not render the subscriber liable as a contributory upon liquidation of the company; nor will such subscriber be entitled to a repayment out of the assets of the company of the money paid on such subscription to the promoters, but which has never reached the company. [Wood's Case, L.R. 15 Eq. 236; Mogridge's Case, 57 L.J. Ch. 932, applied.]

Re Great Northern Ass. Co., Black's Case, 25 D.L.R. 703, 9 W.W.R. 240, 32 W.L.R. 524, 25 Man. L.R. 670.

(§ V F 4—276) — CONTRIBUTORY — AGREEMENT TO TAKE SHARES — INVALIDITY — ABSENCE OF ALLOTMENT — ISSUE OF CERTIFICATES FOR SHARES — LIABILITY CONFINED TO SHARES FOR WHICH CERTIFICATES ISSUED.

Re Dominion Milling Co., Dennis's Case, 8 O.W.N. 496.

(§ V F 4—276) — CONTRIBUTORY — SHAREHOLDER — PROSPECTUS — APPLICATION FOR SHARES — ALLOTMENT — NOTICE.

Re Port Arthur Waggon Co., 8 O.W.N. 480.

(§ V F 4—276) — CONTRIBUTORIES — EVIDENCE — ESTOPPEL.

Re Nagrella Manuf. Co., 8 O.W.N. 452.

G. STOCKHOLDERS' MEETINGS; VOTING.

(§ V G 1—283) — REGULARITY — RESOLUTIONS.

Where the by-laws of a company require the meetings of shareholders to be called by the president of the company at the written request of five members; a meeting called by the secretary-treasurer without the consent and against the will of the president is illegal, and any resolution adopted at such meeting is null and void.

Courchene v. Viger Park Co., 23 D.L.R. 693, 24 Que. K.B. 97.

(§ V G 2—291) — BOND ISSUE — POWERS OF MAJORITY — PRIORITIES.

Dissentient or absentee bondholders are bound by the action of the majority in declaring a second issue of bonds a priority over a first issue in order to raise money for the payment of pressing claims, and in conformity to the powers of a deed of trust authorizing the issue.

Re B.C. Portland Cement Co., Ltd., 22 D.L.R. 609, 8 W.W.R. 1119, 31 W.L.R. 938.

[Affirmed March 7, 1916.]

VI. Dissolution; forfeiture; insolvency; winding-up.

A. IN GENERAL.

(§ VI A—305) — QUALIFICATIONS OF LIQUIDATOR — DISINTERESTED PARTY.

It is advisable that the liquidator for the winding-up of a company under the Winding-up Act, R.S.C. 1906, ch. 144, sec. 124, be a disinterested party having no claims against and no share in the company. [Re Central Bank of Canada, 15 Ont. R. 309, followed.]

Re Men's Wear Ltd., 22 D.L.R. 530.

(§ VI A—305) — DOMINION WINDING-UP ACT — JURISDICTION OF PROVINCIAL COURTS.

The British Columbia Court having made the winding-up order is a Dominion Court *ad hoc*, and that, generally speaking, a Provincial Court should not act unless at the request of the Dominion Court, but, if requested, it should in every way assist such Dominion Court. That the only grounds justifying a Provincial Court acting in the first instance would be matters of urgency, and that the facts in the present case do not disclose such grounds.

Mowat v. Dominion Trust Co., 8 S.L.R. 404.

(§ VI A—305) — DISCRETIONARY POWERS AS TO WINDING-UP — BEST INTERESTS OF CREDITORS.

Upon application to have a joint stock company wound up, the Court grants the order only if it believes it just and equitable for all the interests concerned. The discretionary powers of the Court in such a matter are very wide. The winding-up of a company being made especially and above

all in the interest of the creditors, the Judge should as a rule, when considering the advisability of the winding-up, conform to their views and exercise his discretion in their favour if their interests come in conflict with those of the shareholders.

Fortin v. Dorchester Electric Co., 48 Que. S.C. 258.

(§ VI A-313)—PETITION FOR BY CREDITOR—WINDING-UP ACT, R.S.C. 1906, CH. 144—NO OPPOSITION BY OTHER CREDITORS—REFUSAL OF COMPANY'S REQUEST FOR DELAY—DISCRETION.

Re Heyes Brothers, 8 O.W.N. 390.

(§ VI A-313)—PETITION FOR ORDER UNDER DOMINION WINDING-UP ACT AFTER LIQUIDATION BEGUN BUT NOT COMPLETED UNDER ONTARIO COMPANIES ACT—INTEREST OF UNSECURED CREDITORS—INVESTIGATION OF STOCK SUBSCRIPTIONS—COSTS.

Re Hough Lithographing Co., 8 O.W.N. 377.

B. GROUNDS OF FORFEITURE.

(§ VI B-315) — MINING COMPANY — WINDING-UP — DIRECTORS — MISFEASANCE — PURCHASE OF MINING PROPERTY FROM DIRECTOR—PAYMENT BY ALLOTMENT OF SHARES—PROSPECTUS—ABSENCE OF CONCEALMENT AND FRAUD — OVER-ISSUE OF SHARES—SALE AT DISCOUNT—NO LOSS SUSTAINED—BREACH OF DUTY—TRUSTEE CLAUSES OF LIMITATIONS ACT, R.S.O. 1914, CH. 75—APPLICATION OF.

Re Norwalk Mining Co., 9 O.W.N. 41.

(§ VI B-323)—NON-USER OF CORPORATE POWERS—DISPOSITION OF ASSETS.

It is the duty of the Court, in the proper exercise of its discretion, to make an order for the winding-up of a company, under the Winding-up Act, R.S.C. 1906, ch. 144, sec. 11, where it appears that most of its assets had been disposed of and that no active business was being carried on or that it was being operated at a loss, and the principal person opposing the petition to its being wound up was its president, who was receiving a salary payable out of its assets.

Re Hamilton Ideal Manuf. Co., 23 D.L.R. 640, 34 O.L.R. 66, 8 O.W.N. 391.

C. EFFECT ON PROPERTY RIGHTS.

(§ VI C-330) — SPECIFIC PERFORMANCE — RESCISSION.

The discretion of the Court under sec. 22 of the Winding-up Act, Can., is properly exercised by granting leave to sue a company in liquidation for specific performance of an agreement for exchange of lands or in default that the agreement be declared cancelled, so that plaintiff may recover his own lands of which the company in liquidation had been allowed to take possession.

Re Transcontinental Townsite Co., 21 D.L.R. 291, 25 Man. L.R. 193, 8 W.W.R. 93, 30 W.L.R. 833.

(§ VI C-332)—WINDING-UP OF TRUST COMPANY—RIGHTS OF CESTUI QUE TRUST—RECOVERY OF SECURITIES.

The right of a trust company, to retain as its remuneration part of the profits realized from investments, creates a trust coupled with an interest, which, upon the winding-up of the corporation passes to the liquidator as an asset for the general benefit of creditors, and the Court will not compel the liquidator, before the final wind-up, to surrender such securities to the cestui que trust, nor appoint a special trustee to carry it into effect.

Re Dominion Trust and Harper, 24 D.L.R. 670, 9 W.W.R. 503, 32 W.L.R. 832.

(§ VI C-332)—WINDING-UP OF TRUST COMPANY—PROCEEDINGS UNDER PROVINCIAL ACT—LEAVE OF COURT.

Where, in pursuance of the Winding-up Act, ch. 144, R.S.C. 1906, a liquidator is appointed to take charge of the assets of an insolvent trust company, the holders of trust certificates, the funds and securities of which are by statute required to be separately kept from mixing with the general assets of the company, are regarded as cestuis que trust and not as creditors, and are not required to obtain leave of the Court having charge of the winding-up under sec. 22 of the Winding-up Act for the purpose of proceeding under a provincial Trustee Act to preserve the administration of the trust.

Stewart v. Lepage, 24 D.L.R. 554.

(§ VI C-332)—UNREGISTERED ASSIGNMENT BY WAY OF MORTGAGE—"DEBTS"—"BOOK DEBTS."

An unregistered mortgage made by way of assignment is void as against a liquidator. It is impossible for the parties to a transaction by way of mortgage or charge to alter the effect of sec. 102 (1) of the Companies Act by adopting a form which does not accord with the real transaction between them. [Saunderson & Co. v. Clark, 29 T.L.R. followed.] The term "debts" in the above section should not be confined to such debts as are presently due. The expression "book debts" is generally used with reference to purely mercantile transactions, but is an apt term to describe an obligation accruing due to a mortgage company.

Re Metropolitan Mortgage & Sav. Co., 7 W.W.R. 1204.

(§ VI C-332)—LEAVE TO BRING ACTION IN NAME OF LIQUIDATORS — INDEMNITY — COSTS—PROPOSED SALE OF ASSETS—ADJOURNMENT OF CONSIDERATION—ORDER OF MASTER—APPEAL.

Re Bailey Cobalt Mines Ltd., 8 O.W.N. 433.

D. EFFECT ON CAUSES OF ACTION.

(§ VI D-335)—CLAIMS AGAINST LIQUIDATORS — SUMMARY OR PLENARY PROCEEDINGS.

Claims against liquidators may be enforced by a summary proceeding, and a

plenary action taken against a liquidator for the wrongful taking possession of goods while in transit after the winding-up of the corporation will either be stayed or dismissed.

Carson v. Montreal Trust Co., 23 D.L.R. 690, 49 N.S.R. 50.

(§ VI D—335) — ACTIONS BY LIQUIDATOR — EXAMINATION FOR DISCOVERY BY CONTRIBUTORIES.

Sec. 117 of the Winding-up Act, R.S.C. 1906, ch. 144, confers a special power, of inquisitorial character, intended to be used by the liquidator, acting under a winding-up order, for his own guidance in the conduct of the liquidation. But, in certain circumstances, there may be some right of discovery open to a person charged in the winding-up as a contributory. In this case it was directed, upon an appeal, that an Official Referee, before whom the reference under an order for the winding-up of a bank was pending, should consider the application of five persons whose names were placed by the liquidator upon the list of contributories, for leave to examine for discovery the former general manager of the bank, in the view that the applicants might have a claim to invoke the aid of sec. 117. [Whitworth's Case, 19 Ch. D. 118, 120, and Re Penysflog Mining Co., 30 L.T.R. 861, applied.]

Re Sovereign Bank of Can., Newman's Case, 34 O.L.R. 577, 9 O.W.N. 168.

(§ VI D—335) — ACTION BY LIQUIDATOR TO RECOVER CHATTELS — EVIDENCE — SALE — COSTS.

McCammon v. Westport Mnf. Co., 9 O.W.N. 6.

(§ VI D—336) — APPLICATION BY LIQUIDATOR TO SET ASIDE WRIT — LEAVE OF COURT.

Sec. 22 of the Winding-up Act (Sask.), which prohibits any action or proceedings against the company after the winding-up order unless with the leave of the Court, does not apply to an application to set aside a concurrent writ and service. [Mersey Steel & Iron Co. v. Naylor, 9 Q.B.D. 648, 9 App. Cas. 434, applied.]

Frid Lewis Co. v. Holmes, 31 W.L.R. 918, 8 W.W.R. 1195, 8 S.L.R. 185.

(§ VI D—337) — WINDING-UP PENDING ACTION — SUBSEQUENT PROCEEDINGS BY LIQUIDATOR.

A joint stock company, which is placed in liquidation while an action against it is pending, cannot afterwards take any proceedings nor demand the dismissal of the action except through the liquidator authorized by the Judge.

Royal Paper Box Co. v. Canada Cement Construction Co., 48 Que. S.C. 287.

E. PROCEDURE; POWER OF LIQUIDATOR.

(§ VI E—340) — MODE OF ENFORCING JUDGMENT OF ANOTHER PROVINCE.

The correct practice in order to enforce an order or judgment of the Court of another

province made under the Winding-up Act, and produced to the registrar pursuant to sec. 126, is to enter such order as a judgment of this Court under the rules made under the Act by this Court in Trinity Term, 1888, without any formal motion to that effect.

Re Winding-up Act and Sovereign Bank, 43 N.B.R. 519.

(§ VI E—344) — STATUTORY LIABILITY OF DIRECTORS.

The burden of proof that transfers of unpaid stock were made without due information and inquiry as to the financial responsibility of the transferee is upon the liquidator where the insolvent company was by its special Act of incorporation made subject to the statutory provision that the directors should be jointly and severally liable for allowing the registration of a transfer of unpaid stock to a person not apparently of sufficient means, and the liquidator seeks to enforce that statutory liability.

Re Ontario Fire Ins., 23 D.L.R. 758, 8 W.W.R. 1081, 31 W.L.R. 483.

(§ VI E—344) — ENFORCING LIABILITIES OF CONTRIBUTORIES.

A liquidator of a company who, in a petition entitled "Petition to settle the list of contributories," concludes by asking that certain persons named be summoned to shew cause why they should not be declared contributories, cannot enter upon the merits of the litigation; and the Court cannot upon these conclusions declare the shareholders contributories nor order them to shew cause at some other date.

Frank v. Boston Shoe Co., 24 Que. K.B. 267.

(§ VI E—344) — INSCRIPTION IN REVIEW — AUTHORIZATION — DELAY.

Where the liquidator of an incorporated company made a petition for an authorization to inscribe a judgment in review, and seeing that the delay was about to expire, filed the inscription before his demand was granted, the Court of Review will not reject the inscription, but will ratify the procedure.

Boston Shoe v. Frank, 48 Que. S.C. 65.

(§ VI E—344) — DISMISSAL OF PETITION TO WIND-UP — LEAVE TO APPEAL — REFUSAL — WINDING-UP ACT, R.S.C. 1906, CH. 144, SEC. 101 (a), (b).

Re Elliott & Son Ltd., 9 O.W.N. 51.

F. INSOLVENCY; RIGHT AND PREFERENCES OF CREDITORS.

(§ VI F 1—345) — OPPOSITION BY CREDITORS TO WIND UP — FUTILITY OF PROCEEDINGS.

The onus is on those opposing a creditor's application for a winding-up order, where the statutory presumption of the company's insolvency arises, to prove that there is no reasonable possibility of any benefit accruing to the applicant and other unsecured

creditors from the winding-up. [Re Crigglestone Coal Co., [1906] 2 Ch. 327, referred to.]

Re South East Corp., Ltd., 23 D.L.R. 724, 8 A.L.R. 460, 8 W.W.R. 297, 31 W.L.R. 145.

(§ VI F1—345)—DISTRESS FOR RENT—LEAVE OF COURT.

Under sub-sec. 7 of sec. 18 of the Companies' Winding-up Ordinance, 1903 (Alta.), a distress for rent, after the commencement of the winding-up proceedings, cannot be had without leave of the Court. [Re Jasper Liquor Co., 23 D.L.R. 41, affirmed.]

Re Jasper Liquor and Winding-up Act, 25 D.L.R. 84, 9 W.W.R. 364, 32 W.L.R. 727.

(§ VI F1—345)—COMPROMISE BY SURETY WITH LIQUIDATOR—RIGHT OF SURETY TO RANK AS CREDITOR.

By a contract of suretyship C. and others guaranteed payment to a bank of advances to a company by discount of negotiable securities and otherwise, the contract providing that it was to be a continuing guarantee to cover any number of transactions, the bank being authorized to deal or compound with any parties to said negotiable securities and the doctrines of law and equity in favour of a surety not to apply to its dealings. The company became insolvent, and its liquidator brought action against the bank to set aside some of its securities, which action was compromised, the bank receiving a certain amount, reserving its rights against the sureties and agreeing not to rank on the insolvent estate. The sureties were obliged to pay the bank and sought to rank for the amount. Held, affirming the judgment of the Appellate Division, that they were not debarred by the compromise of said action from so ranking.

Brown v. Coughlin, 50 Can. S.C.R. 100.

[Same case sub. nom. Re Stratford Fuel Co., 13 D.L.R. 64, 28 O.L.R. 481, reversing 8 D.L.R. 146, affirmed.]

(§ VI F1—345) — RECEIVERSHIP — ADVANCES MADE BY BANK UPON SECURITY OF TIMBER—PAYMENT OF CROWN DUES BY BANK—CLAIM FOR REPAYMENT OUT OF ASSETS OF BANK IN PRIORITY TO CLAIM OF MORTGAGEE—OBLIGATION OF COMPANY NOT BINDING ON MORTGAGEE—PREFERENTIAL LIEN OF CROWN—VALIDITY AGAINST SECURED CREDITORS — SUBROGATION — SALVAGE—COURT IN CONTROL OF FUND—EQUITABLE ADMINISTRATION.

Re Imperial Paper Mills of Canada, Diehl v. Carritt, 7 O.W.N. 630.

(§ VI F1—346)—VOLUNTARY TRANSFER OF ASSETS—FRAUD ON CREDITORS—ONUS.

Where property is transferred from one company to another, the person who planned the transfer for the transferor company, being the guiding spirit of the transferee company, and the effect of such transfer being to hinder and delay the creditors of the transferor company, the onus of shewing that the transfer was not made with the intent to hinder and delay creditors of the

transferor company, falls upon the transferee company. [Re Hirth, [1899] 1 Q.B. 612; Re Slobodinsky, [1903] 2 K.B. 517; Barthels v. Winnipeg Cigar Co., 2 A.L.R. 21; Mackay v. Douglas, L.R. 14 Eq. 106; Ex parte Russell, 19 Ch. D. 588, referred to.] Walter v. Leduc, 8 W.W.R. 360.

(§ VI F1—347)—ASSIGNMENT FOR BENEFIT OF CREDITORS—APPLICATION FOR WIND-UP ORDER.

Where a joint stock company has made an assignment for the benefit of its creditors, a creditor of the company is not entitled as a matter of course to a winding-up order. [Re Strathy Wire Fence Co., 8 O.L.R. 186, and Re Rubber and Produce Investment Trust, [1915] L.R. 1 Ch. 382, applied.] The Assignments Act applies to companies.

Re Olympia Co., Ltd., 9 W.W.R. 263, 32 W.L.R. 539.

[Affirmed in 25 D.L.R. 620.]

(§ VI F1—347)—ASSIGNMENT FOR CREDITORS —RIGHT TO WIND-UP ORDER—OPPOSITION BY MAJORITY.

A creditor who consents to the winding-up of a provincial company under a Provincial Assignment Act cannot afterwards invoke the Dominion statute to wind up the company under the Winding-up Act, R.S.C. 1906, ch. 144; nor will the Court make such order *ex debito justitiae*, even where insolvency is established, for the purpose of prosecuting claims which would not prove of material benefit and could be as effectively done by the official assignee under the provincial statute, particularly where such order is opposed by a majority of the creditors. [Re Strathy Wire Fence Co., 8 O.L.R. 186, applied.]

Re Olympia Co., 25 D.L.R. 620, 9 W.W.R. 875.

(§ VI F1—347)—PETITION BY UNSECURED CREDITORS UNDER WINDING-UP ACT, R.S.C. 1906, CH. 144—PREVIOUS ASSIGNMENT BY COMPANY FOR BENEFIT OF CREDITORS—SALE OF ASSETS ORDERED BY COUNTY COURT JUDGE—CHARGE OF COLLUSION—DISCRETION.

Re International Trap Rock Co., 8 O.W.N. 461.

(§ VI F1—347)—ASSIGNMENT FOR BENEFIT OF CREDITORS—TRANSFER OF ASSETS OF COMPANY TO NEW COMPANY—RESOLUTION OF CREDITORS—DISSENTIENT CREDITOR—INJUNCTION—DELAY IN MOVING.

Kreamer v. Clarkson, 8 O.W.N. 545.

(§ VI F2—350)—CLAIM OF MUNICIPAL CORPORATION FOR BUSINESS TAX—WHEN DEFERRED—DISTRESS.

Re Faulkner Ltd., City of Ottawa's Claim, 25 D.L.R. 780, 34 O.L.R. 536, 9 O.W.N. 118.

(§ VI F2—350)—PREFERENCE—REPAYMENT OF ADVANCES.

The reimbursement by a joint stock company, on the eve of being put in liquidation, of advances which have been made to it and

which have benefitted its creditors, does not constitute a preferential payment of which the liquidators can subsequently demand the annulment in the name of the creditors.

Larue v. Dohan, 48 Que. S.C. 374.

(§ VI F 2—350)—CLAIM OF MORTGAGEE FOR BONDHOLDERS—APPLICATION FOR LEAVE TO PROCEED TO ENFORCE, NOTWITHSTANDING WINDING-UP ORDER—WINDING-UP ACT, R.S.C. 1906, CH. 144, SEC. 22—DISCRETION—DELAY TO ENABLE LIQUIDATOR TO SELL ASSETS—COSTS.

Re Martin International Trap Rock Co., 8 O.W.N. 599.

(§ VI F 2—350)—SALE OF MACHINERY TO COMPANY BEFORE WINDING-UP — PROPERTY NOT TO PASS TILL PAYMENT—CLAIM OF UNPAID CREDITORS TO POSSESSION AND OWNERSHIP OF MACHINERY — ORDER OF JUDGE ON APPEAL FROM RULING OF MASTER—REFUSAL OF LEAVE FOR FURTHER APPEAL.

Re Motor Street Cleaning Co., 8 O.W.N. 233.

(§ VI F 2—350)—RECEIVER—SALE OF ASSETS — CLAIM BY ELECTRIC LIGHT COMPANY IN PRIORITY TO DEBENTURES—TRIAL OF ISSUE—FINDING OF FACT.

Diehl v. Carritt, 9 O.W.N. 109.

(§ VI F 2—354)—RIGHTS AND PREFERENCES OF CREDITORS — PREFERRED SHAREHOLDERS.

Where there is no acquiescence, delay, or conduct on the part of the alleged contributory to estop him from alleging that at the time when he made his application for preference shares and thenceforth until the liquidation proceedings the company was not in a position to give him preference shares, he is entitled to set up in answer to the liquidator's claim to place him on the list of contributories that he never got what he applied for by reason of irregularities in the issue to him, as preferred shares, of certain shares which were in fact common shares by reason of their having been legally made into preferred, when in fact all of the legally constituted preferred shares had already been issued to others. [*Re Pakenham Pork Packing Co.*, 12 O.L.R. 100, applied; *Re Bankers' Trust and Barnsley*, 19 D.L.R. 590, affirmed.]

Re Bankers' Trust and Barnsley, 21 D.L.R. 623, 21 B.C.R. 130, 8 W.W.R. 38, 30 W.L.R. 738.

(§ VI F 2—357)—LIQUIDATOR OF COMPANY MADE GARNISHEE—PERSONAL LIABILITY FOR WAGES OF PERSONS EMPLOYED BY LIQUIDATOR IN CARRYING ON BUSINESS OF COMPANY AFTER WINDING-UP ORDER—LEAVE TO PROCEED AGAINST LIQUIDATOR—NECESSITY FOR—QUESTION OF LAW FOR JUDGE IN DIVISION COURT—MOTION FOR PROHIBITION.

Scott v. Silver, 8 O.W.N. 552.

(§ VI F 2—357a)—PREFERENTIAL LIEN OF LANDLORD.

On an order being made for the winding-up of the company under the Winding-up Act, R.S.C. 1906, ch. 144, after an assignment for creditors made by the company under the Assignments and Preferences Act, R.S.O. 1914, ch. 134, the liquidator takes the assets subject to the preferential lien of the landlord under sec. 38 of the Landlord and Tenant Act, R.S.O. 1914, ch. 155, for rent in arrear whether distrained for or not, upon goods available for distress limited, however, to the rent for the period of one year prior to the assignment and the three months following. [*Re Clinton Thresher Co.*, 1 O.W.N. 445, applied; *Fuchs v. Hamilton Tribune Co.*, 10 P.R. (Ont.) 409, distinguished.]

Re Fashion Shop, 21 D.L.R. 478, 33 O.L.R. 253, 8 O.W.N. 71.

(§ VI F 2—357a) — PREFERRED CLAIMS — RENT.

A landlord has no preferred claim for past due rent distrained for where the distress lien is not in effect at the date of the commencement of the winding-up proceedings.

Re Jasper Liquor Co., 23 D.L.R. 41, 9 W.W.R. 6, 32 W.L.R. 213.

[Affirmed in 25 D.L.R. 84.]

VII. Foreign corporations; extra provincial corporations.

B. DOING BUSINESS WITHIN PROVINCE.

(§ VII B—370) — DOMINION INCORPORATION — PROVINCIAL LICENSE—COMPANY DOING BUSINESS AS CARRIERS IN CITY—BOARD OF POLICE COMMISSIONERS—POWERS OF—BY-LAW—IMPOSITION OF LICENSE FEE—MUNICIPAL ACT, SECS. 354, 422—MOTION TO QUASH BY-LAW—DISCRETION—COSTS.
Re Major Hill Taxicab Co. and Ottawa, 7 O.W.N. 747, 8 O.W.N. 446.

(§ VII B—373)—FAILURE TO REGISTER — VALIDITY OF CONTRACTS.

Under the Companies Act, R.S.M. ch. 35, secs. 118 and 122, contracts entered into by unregistered foreign corporations are not void, but the right of action is suspended until the company registers. [*Beasmer Gas v. Mills*, 8 O.L.R. 647; *Semi-Ready v. Tew*, 19 O.L.R. 227, applied.]

Consolidated Investments v. Caswell, 21 D.L.R. 525, 25 Man. L.R. 213, 8 W.W.R. 43.

(§ VII B—373) — NON - COMPLIANCE WITH STATUTORY REQUIREMENTS — EFFECT ON VALIDITY OF CONTRACT.

A contract entered into by a foreign corporation in violation of the Extra-Provincial Companies Act, 1913 (P.E.I.), prohibiting, under penalties, foreign corporations from carrying on business unless a sworn statement, required by the statute, is transmitted to the provincial authorities, is illegal and unenforceable by the corporation.

Willet Martin Co. v. Full, 24 D.L.R. 672.

C. ACTIONS BY OR AGAINST.

(§ VII C—376) — NON-REGISTRATION —
CARRYING ON BUSINESS—WHAT IS.

The mere setting up and starting the working of machinery sold by an extra-provincial company does not constitute a carrying on of business in another province within the meaning of the Foreign Companies Act, R.S. Sask. 1909, ch. 73, depriving foreign companies of the right of action in the event of their non-compliance with the requirements as to registration.

Linde Canadian Refrigerator Co. v. Sask. Creamery Co., 24 D.L.R. 703, 51 Can. S.C.R. 400, 8 W.W.R. 1246, reversing 7 S.L.R. 245.

(§ VII C—376)—ACTION BY FOREIGN LAND
COMPANY—SPECIFIC PERFORMANCE.

A foreign corporation not licensed to hold lands within Manitoba under R.S.M. 1913, Pt. IV., cannot maintain an action in that province for specific performance of an agreement to exchange lands in the foreign jurisdiction for lands in Manitoba; the action may be dismissed on a summary application under Manitoba Rule 639. [Empire Cream Separator Co. v. Maritime Dairy Co., 38 N.B.R. 309, followed; Euclid Avenue Trusts Co. v. Hohs, 24 O.L.R. 447, distinguished.]

North Wyoming v. Butler, 23 D.L.R. 274, 25 Man. L.R. 288, 8 W.W.R. 340.

(§ VII C—376)—ACTION BROUGHT BY EXTRA-
PROVINCIAL COMPANY—STAY OF PROCEED-
INGS—LICENSE OBTAINED PENDING ACTION
—LEAVE TO PROCEED—TERMS—COSTS—
EXTRA-PROVINCIAL CORPORATIONS ACT,
R.S.O. 1914, CH. 179, SECS. 4, 16.

New York & Pennsylvania Co. v. Holgevac, 9 O.W.N. 123.

D. WINDING-UP; INSOLVENCY OF FOREIGN
CORPORATION.

(§ VII D—380)—DISTRIBUTION.

The Winding-up Act, R.S.C. 1906, ch. 144, applies to all companies carrying on business in Canada, and includes a foreign corporation which is being liquidated in the country of its origin; and the assets in the hands of the Canadian liquidator are to be distributed pro rata amongst all creditors of the company ranking *pari passu*, without preference to the claims of creditors residing in Canada.

Re Breakwater Co., 22 D.L.R. 294, 33 O.L.R. 65, 7 O.W.N. 572.

VIII. Crimes and offences by corporation.

(See previous Annual Digests.)

CORROBORATION.

See Evidence, XII.

Of claims against decedent's estates, see Executors and Administrators.

COSTS.

I. RIGHT TO RECOVER; LIABILITY FOR.

II. AMOUNT; PRACTICE; COLLECTION.

Taxing solicitor's costs, see Solicitors.

Annotation.

Right of alien enemy to recover: 23 D.L.R. 375, 383.

I. Right to recover; liability for.

(§ I—1)—UNSUCCESSFUL ACTION AGAINST IN-
DORSER OF CHEQUE.

Held, that the plaintiff bank was not entitled to recover from the defendant bank the costs incurred in unsuccessful actions brought against the indorsers of the cheques.

Bank of B.N.A. v. Standard Bank, 34 O.L.R. 648, 9 O.W.N. 216.

(§ I—2)—UPON STRIKING OUT APPEARANCES.

Under O. X, relating to striking out appearance, the defendant is only entitled to the costs of applications thereunder, (1) if the plaintiff makes an application not within the order, or (2) where the plaintiff in the opinion of the Judge knew that the defendant relied on a contention which would entitle him to unconditional leave to defend.

Quebec Bank v. Kohn, 9 W.W.R. 576.

(§ I—2c)—APPEAL FROM ORDER IN INTER-
LOCUTORY PROCEEDING.

A successful appellant from a judgment or order in an interlocutory proceeding is as a general rule entitled to the costs of the appeal forthwith after taxation and to the costs below in any event in the cause.

Malkin Co. v. McGaghran, 20 B.C.R. 479.

(§ I—2c)—WITHDRAWAL OF APPEAL.

An objection to the jurisdiction should be taken by motion to quash. If left until the case comes on for hearing and the appeal is quashed, the respondent should only have the costs of a motion to quash.

Dirks v. Fast, 8 S.L.R. 343, 9 W.W.R. 583, 32 W.L.R. 967.

(§ I—2c)—ON INSCRIPTION FOR REVIEW.

A defendant, who has appeared but not pleaded, and who inscribes for review the judgment given *ex parte*, will not be given costs against his opponent if the judgment is modified on the grounds which only arose on the hearing of the case.

Versailles v. Harel, 47 Que. S.C. 468.

(§ I—2c)—ON APPEAL—HOW TAXED—IM-
PORTANT QUESTIONS.

[Mowatt v. Goodall, 24 D.L.R. 781, referred to.]

Mowatt v. Goodall, 24 D.L.R. 891.

(§ I—2d)—ACTION FOR BREACH OF WAR-
RANTY—COUNTERCLAIM.

A defendant counterclaiming for the price of goods in an action for breach of warranty of sale will not be allowed his costs where the counterclaim is undisputed and the plaintiff otherwise succeeds on all the issues of the action, notwithstanding that on appeal by the plaintiff and cross-appeal by defendant the amount of damages allowed for the breach had been reduced.

Victoria Saanich Co. v. Wood Motor Co., Ltd., 23 D.L.R. 79, 8 W.W.R. 1124, 31 W.L.R. 853.

(§ I-2d)—PLEA OF SET-OFF.

Costs may be properly allowed to a defendant who succeeds on the plea of set-off.

Powell v. Montgomery, 23 D.L.R. 213, 8 S.L.R. 224, 31 W.L.R. 759.

(§ I-6)—BORNAGE—CONTESTATION OF BOUNDARIES—AMENDMENT.

In an action en bornage the plaintiff who demands a boundary following his possession and his title, but who alleges that he holds land of a greater extent than that allowed him by the judgment, should not for that reason be condemned to pay the costs of the action. On the contrary, the defendant who contests the necessity of the bornage and asks that the action be dismissed, and who finally acquiesces in the bornage only during the hearing by an amendment to his defence, should be condemned to pay the costs of the action.

Courtemanche v. Girouard, 48 Que. S.C. 168.

(§ I-7)—FORECLOSURE OF MECHANICS' LIEN—SUBSEQUENT ACTIONS.

Where more than one action is brought for the enforcement of mechanics' liens, the person bringing the subsequent action will not be entitled to the costs thereof.

St. Pierre v. Rekert, 23 D.L.R. 592, 8 S.L.R. 412, 31 W.L.R. 909.

(§ I-7)—FORECLOSURE BY ASSIGNEE FOR CREDITORS.

In a suit for foreclosure an official assignee for benefit of creditors under the Manitoba Assignments Act, who is made one of the defendants to the action, is not liable to be ordered to pay costs either personally or out of the funds of the insolvent estate if before defence he had given notice to the plaintiff that he disclaimed all interest in the land and did not propose to defend unless costs were asked against him, and on refusal of this term made a similar disclaimer in his defence filed. [*Ford v. Chesterfield*, 16 Beav. 520, followed.]

Gibson v. Snaith, 21 D.L.R. 716, 25 Man. L.R. 278, 8 W.W.R. 247.

(§ I-8)—EXPROPRIATION PROCEEDINGS—DISCRETION AS TO AWARDING.

The power conferred on arbitrators by sec. 344 of the Municipal Act, R.S.O. 1914, ch. 192, as incorporated in the Public Parks Act, R.S.O. 1914, ch. 203, to award costs as a fixed sum or on the scale of the Courts, is discretionary, which they can exercise by disallowing costs.

Re Hislop & Stratford Park Board, 23 D.L.R. 753, 34 O.L.R. 97, 8 O.W.N. 425.

(§ I-8)—EXPROPRIATION PROCEEDINGS—SOLICITOR AND CLIENT.

In case of an abandonment of expropriation proceedings, the owners are entitled to be fully indemnified for their costs as be-

tween solicitor and client and for all legitimate and reasonable charges and disbursements in consequence of the proceedings.

Quebec, Jacques-Cartier Electric Co. v. The King, 24 D.L.R. 424, 51 Can. S.C.R. 594.

(§ I-8)—EXPROPRIATION—ARBITRATORS' FEES.

The arbitrators' fees are not to be included in and made part of the award in an expropriation for railway purposes; such fees are governed by sec. 199 of the Railway Act, Can., and are to be taxed if the parties do not agree upon the amount.

Green v. C.N.R. Co., 22 D.L.R. 15, 8 S.L.R. 53, 7 W.W.R. 1072, 19 Can. Ry. Cas. 139.

(§ I-8)—EXPROPRIATION OF LAND—COSTS OF ARBITRATION—JURISDICTION TO GRANT.

Re Windatt & Georgian Bay & Seaboard R. Co., 24 D.L.R. 877, 34 O.L.R. 198, 8 O.W.N. 528.

(§ I-8)—EXPROPRIATION PROCEEDINGS UNDER MUNICIPAL ACT—DISTRIBUTION OF COMPENSATION MONIES—PAYMENT INTO COURT—CONTESTATION AS TO RIVAL CLAIMS—DISCRETION OF COURT—OBLIGATION OF EXPROPRIATING BODY.

Re Linden and City of Toronto, 7 O.W.N. 681.

(§ I-8a)—INTERPLEADER ISSUE—LIABILITY OF EXECUTION CREDITORS.

Where an interpleader tried under r. 569 (Sask.) the execution creditors join on the issue as defendants and the claimant is successful and costs are given to the sheriff and claimant, the execution creditors are jointly and severally liable for those costs which may not be apportioned. [*Carter v. Stewart*, 7 P.R. 85, followed.] The Creditors' Relief Act, R.S.S. ch. 63, sec. 3, sub-sec. (c), has not altered the above rule (per McKay, J.).

Macdonald v. Nicholson, 31 W.L.R. 510; 8 S.L.R. 187, 8 W.W.R. 963.

(§ I-8a)—INTERPLEADER ISSUES—DISCRETION AS TO—EXECUTION CREDITOR AND CLAIMANT—SEIZURE OF CROP.

Beaver Lumber Co. v. Dolson, 24 D.L.R. 895, 8 W.W.R. 1137, 31 W.L.R. 819.

(§ I-11)—MUNICIPAL ACTIONS.

Although the question of costs is a matter for the discretion of the trial Judge, which will ordinarily not be interfered with on appeal unless there has been a misapprehension of fact or disregard of principle, the general guiding principle is that the party who succeeds is entitled to costs against the unsuccessful party; but a municipality, on whose behalf a ratepayer successfully contests the validity of an agreement with a company, cannot be properly taxed with the costs of the co-defendant company. [*Garipey v. Greene*, 23 D.L.R. 797, referred to; *Livingstone v. Edmonton*, 24 D.L.R. 191, varied as to costs.]

Livingstone v. Edmonton Industrial & City of Edmonton, 25 D.L.R. 313, 9 W.W.R. 794.

(§ I-11a)—ADDING MUNICIPALITY AS DEFENDANT.

Costs may properly be allowed a plaintiff where it appears reasonable and proper for him to add as a party defendant a municipality chargeable with negligence. [Till v. Town of Oakville, 21 D.L.R. 113; Besterman v. British Motor Cab Co., [1914] 3 K.B. 181, followed.]

Burrows v. G.T.R. Co., 23 D.L.R. 173, 18 Can. Ry. Cas. 183, 34 O.L.R. 142, 8 O.W.N. 459.

(§ I-14)—SECURITY FOR—DOUBLE ACTIONS AGAINST PRINCIPAL AND AGENT.

A plaintiff who has taken action and recovered judgment against the maker of a promissory note given for the price of a chattel should not be ordered to give security for costs under Alberta r. 9 (c) in a future action against the undisclosed principals of the maker of the note for the price of the chattel, the second action not being one for the same cause as the first. [Caswell v. Murray, 18 C.L.J. 76; Brunson v. Humphrey, 14 Q.B.D. 141, referred to. Compare Ontario r. 373 (c), 1913.]

Patison v. Rowan, 23 D.L.R. 271, 8 W.W.R. 802, 31 W.L.R. 394.

(§ I-14)—SECURITY FOR ON APPEAL—DELAY IN ASKING.

Where it appears that the appellant is unable to pay the costs in the event of a dismissal of the appeal, an application for security of such costs must be made promptly, and where the application is delayed until after the appellant had prepared and filed his factum, the Court will refuse to entertain same.

The King v. Gerow; Ex parte Gross, 24 D.L.R. 664, 43 N.B.R. 352.

(§ I-14) — SECURITY FOR — DISCOVERY — EXAMINATION FOR—NO DEFENCE SHEWN —GOODS REPOSSESSED—RIGHTS OF DEFENDANT.

Malotte Cream Separator Co. v. Graham, 21 D.L.R. 865.

(§ I-14)—SECURITY FOR—PAST AND FUTURE COSTS—PLAINTIFF'S ABSENCE FROM PROVINCE—INTERPRETATION OF CONTRACT—QUESTIONS OF LAW.

Crossman v. Purvis, 23 D.L.R. 883, 9 W.W.R. 2, 32 W.L.R. 215.

(§ I-14)—SECURITY FOR—TEMPORARY RESIDENTS.

Roberts v. Daniels, 25 D.L.R. 864.

(§ I-14)—SECURITY FOR—PRIMA FACIE RIGHT AGAINST NON-RESIDENTS.

Where upon the face of the proceedings it appears that the plaintiff is resident—or if a corporation has its chief place of business without the jurisdiction, the defendant is prima facie entitled to the costs of an application for security, although the application is dismissed upon the plaintiff shewing assets within the jurisdiction.

Whitla v. Stoffel, 33 W.L.R. 109.

(§ I-14)—SECURITY FOR—BOND—SUFFICIENCY OF SURETIES—CASH DEPOSIT.

Imperial Elevator & Lumber Co. v. Hillman, 31 W.L.R. 546.

(§ I-14)—SECURITY FOR—CROSS-EXAMINATION ON AFFIDAVIT.

Where a defendant has moved for security for costs under Costs r. 10 (Alta.), and disclosed a prima facie defence in his affidavit and cross-examination thereon, the plaintiff should not be allowed to continue the cross-examination for the purpose of controverting that defence. [Scott v. Holmes, 6 W.W.R. 1190, considered.]

Victor v. Webb, 32 W.L.R. 887.

(§ I-14)—SECURITY FOR—ACTION IN REPRESENTATIVE CAPACITY.

Where another person is in fact proceeding with an action in the name of the party on the record, and that party is not insolvent, the Court will compel him for whose benefit the action is proceeding to come in and give security for costs. [Andrews v. Morris, 7 Dowl. P.C. 712, applied.]

Bruce v. Nova Scotia Fire Ins. Co., 9 W.W.R. 342, 25 Man. L.R. 724.

(§ I-14)—SECURITY FOR—BONDING COMPANY AS PLAINTIFF.

Security for costs will not be ordered against a plaintiff company where the company is one approved by the Lieutenant-Governor-in-Council, to furnish security required by the Court, under the Guarantee Companies Security Act (Sask.).

U.S. Fidelity v. Gouin, 31 W.L.R. 912, 8 S.L.R. 182, 8 W.W.R. 1198.

(§ I-14)—SECURITY FOR COSTS—RULE 373 (d), (g)—STAY OF PROCEEDINGS—REFUSAL TO EXERCISE INHERENT JURISDICTION OF COURT.

Bateman v. Nussbaum, 8 O.W.N. 250, 305.

(§ I-14)—SECURITY FOR COSTS—ONE OF TWO PLAINTIFFS OUT OF THE JURISDICTION—SOLVENT PLAINTIFF IN JURISDICTION—JOINT CLAIM OF TWO PLAINTIFFS.

Labrosse v. McLeod, 9 O.W.N. 246.

(§ I-14)—SECURITY FOR—ACTIONS BY WIFE AGAINST HUSBAND—ALIMONY—CUSTODY OF CHILDREN—WAIVER.

Schmidt v. Schmidt, 9 O.W.N. 336.

(§ I-16)—AGAINST COMPANY IN LIQUIDATION—PREFERRED CLAIM.

An unconditional judgment for costs recovered in an action against a company in liquidation, which was defended by the liquidator on behalf of the estate, is payable in full out of the assets of the estate in the hands of the liquidator, and does not rank *pari passu* with general claims. [Re Bank of Hindustan (Smith's Case), L.R. 3 Ch. 125; Re Bailey, L.R. 8 Eq. 94; Re Wenborn, [1905] 1 Ch. 413; Re Home Investment, 14 Ch.D. 167; Re Dominion Plumbago Co., 27 Ch.D. 34; Re London Metallurgical Co., [1895] 1 Ch. 758; Re Baden Machinery Co., 12 O.L.R. 634, followed.]

Re Transcontinental Townsite Co., Plain-

view Farming Case, 25 D.L.R. 597, 9 W.W.R. 733.

(§ I-16)—OUT OF INSOLVENT'S ESTATE—APPEAL BY CREDITORS. [See *Re Wilson Assignment*, 25 D.L.R. 417.]

Re Wilson Estate, 25 D.L.R. 758, 9 W.W.R. 582, 33 W.L.R. 13.

(§ I-16)—OUT OF DECEDENT'S ESTATE—UNSUCCESSFUL OPPOSITION TO PROBATE OF WILL.

Momberg v. Jones, 25 D.L.R. 768, 9 W.W.R. 270, 32 W.L.R. 544.

(§ I-16a)—ISSUES AS TO VALIDITY OF WILL. *Armitage v. Scrase*, 9 O.W.N. 267.

(§ I-16)—PARTNERSHIP ACTION—COST OUT OF ESTATE.

In a partnership action the defendant admitted the partnership, but alleged that he was not bound to account and that the plaintiff had abandoned his partnership rights before action brought (which defences he abandoned at the trial), and counterclaimed for a balance alleged to be due him on private account. A reference was ordered, and the master found that only one asset of the partnership remained to be collected, and that the defendant was indebted to the plaintiff in a certain sum. Further directions and costs were reserved:—Held, that the plaintiff's costs of the action up to and including trial and examinations for discovery should be paid by the defendant personally. Held, also, that the costs of the reference and the hearing on further directions should come out of the estate. *Semble*, that as the costs directed to be paid out of the estate included the costs of both parties and were not costs which might be taxed and allowed to the successful party in an action as against any other party thereto, the r. 951 did not apply. *Semble*, that this was not such a case as would justify interfering with the statutory limit as to costs provided for by r. 951. Held, also, that the plaintiff should have his costs of the defendant's unsuccessful appeal from the master's report, to be paid by the defendant personally.

Hawkshaw v. Peltier, 33 W.L.R. 43.

(§ I-16)—TAXED COSTS—IN LIEU OF COMMISSION—ADMINISTRATION PROCEEDING—RULE 653.

Re Goldenberg, 7 O.W.N. 789.

(§ I-18)—AMOUNT OF RECOVERY AS AFFECTING—FORECLOSURE.

Rule 27, sub-sec. of the rule as to costs, read in conjunction with sub-sec. 1, must be interpreted to mean, that in all actions other than an action in which the only relief claimed is the payment of a stated sum of money, by way of damages or otherwise (which would seem to include liquidated demands), or for the payment with the added claim for foreclosure or sale of property mortgaged, etc., the costs in a District Court action should be taxed assuming that the amount claimed or recovered in the action is the sum of \$400.

Bienvenue v. Stafford, 8 W.W.R. 423.

(§ I-18)—WHEN REFUSED—APPEALS INVOLVING SMALL AMOUNTS.

Costs were refused to mark the intention of the Court to discourage appeals involving small amounts in County Court actions from provinces which have established Courts of Appeal.

Hammond v. Daykin & Jackson, 8 W.W.R. 512.

(§ I-19)—APPORTIONMENT.

If the two parties succeed and fail equally in their claims all the costs cannot be put upon one of them.

Barré v. Verdon, 48 Que. S.C. 274.

(§ I-19)—PARTIAL SUCCESS.

A plaintiff who succeeds in the Court of first instance, though only partially, is entitled to his costs. Thus, one who sues for a sum of money and for the maintenance of a privilege, and who obtains only a pecuniary condemnation against the defendant, cannot be condemned to pay his own costs.

Benoit v. Vendetti, 48 Que. S.C. 56.

II. Amount; practice; collection.

(§ II-20)—RIGHT OF ATTORNEY TO DEMAND COSTS—POWER OF ATTORNEY NECESSARY.

No proper demand of payment of costs can be made by an attorney unless he has the authority of a specific power of attorney, and a rule of Court ordering payment of the costs and not stating to whom they are to be paid, is vague and uncertain.

The King v. Borden; *Ex parte Kinnie*, 24 D.L.R. 197, 48 N.B.R. 299.

(§ II-20)—UNDERTAKING OF COUNSEL FOR RETURN OF COSTS—HOW ENFORCED.

Upon an application of a successful appellant to include in the minutes of the order for judgment a direction to return the costs of the trial paid upon counsel's undertaking to refund in case the appellant were successful:—Held (*McPhillips, J.A.*, dissenting), that it is not within the province of the Court to make the order. *Per Macdonald, C.J.A.*: After taxation has taken place the parties may then apply in the proper quarter to have an undertaking carried out according to its true intent and meaning.

Thompson v. Columbia Coast Mission, 20 B.C.R. 144.

(§ II-20)—CAVEATOR'S ACTION—PAYMENT AS CONDITION PRECEDENT TO BRING NEW ACTION.

Where a second action by a caveator is for a new cause of action, the costs of a former suit will not be ordered paid as a condition precedent to bringing the new action. [*Abdy v. Abdy*, 12 Times Rep. 524, *Land Titles Act (Sask.)*, R.S.S. 1909, ch. 41, sec. 132, sub-sec. 2, considered.]

Re Otis' Caveat, 31 W.L.R. 534.

(§ II-23)—COMPULSORY WINDING-UP—UNSUCCESSFUL PETITION.

Unsuccessful petitioners for the compulsory winding-up of a company who know that their action is not approved by many of the

creditors of the company should be ordered to pay the costs of the company (or its assignees), those of the creditors opposing the petition, and (semble) those of opposing contributories. [In re Strathy Wire Fence Co., 8 O.L.R. 186; and Re New Gas Co., 5 Ch.D. 703, applied.]

Re Olympia Co., 9 W.W.R. 405, 32 W.L.R. 628.

[Affirmed in 25 D.L.R. 620.]

(§ II—23)—PERSONAL LIABILITY OF LIQUIDATOR.

Following the case of Jackson v. Cannon, 10 B.C.R. 73, the Court of Appeal of British Columbia, held that where a liquidator's name appeared as a party to litigation an order would be made against him personally for payment of costs. (In this particular case the liquidator had won an action in the County Court, but had been defeated on appeal.)

Perrin v. Antlers Realty Co., 8 W.W.R. 631.

(§ II—26)—SOLICITOR SUING OR DEFENDING IN PERSON.

A solicitor, suing or defending an action in person, is entitled, if he obtains judgment, to tax his costs in the ordinary way, but is not entitled to tax unnecessary costs, such as instructions to himself and attendances upon himself. [London and Scottish Benefit Society v. Chorley, 13 Q.B.D. 872; King v. Moyer, 9 P.R. (Ont.), 514, referred to.]

McArdle & Davidson v. Howard, 21 D.L.R. 409, 8 W.W.R. 1056, 31 W.L.R. 705.

(§ II—28)—SCALE OF COSTS—JURISDICTION OF COUNTY COURTS—ACTION REMOVED INTO SUPREME COURT.

Hibbard v. Tp. of York, 25 D.L.R. 836, 34 O.L.R. 377, 9 O.W.N. 19.

[On September 20, 1915, the appeal came again before the Divisional Court; and, leave to appeal on the question of costs having been refused as above, the appeal was dismissed with costs.]

(§ II—28)—TAXED COSTS—CLASS OF APPEAL—REDDITION OF ACCOUNT.

In an action in reddition of account where the balance claimed by the plaintiff is over \$1,000, the bill of costs in appeal must be taxed as of first class. In an appeal from interlocutory judgment, the following item in the bill of costs, to wit: attendance in chambers, \$5; factum, \$50; copy for printer, \$20; correcting proof sheets, \$4; fying factum, \$13; printing factum, \$10, will be allowed, if the parties have produced and used voluntarily the factum with the approbation of the Court.

Barnard v. de Sambor, 24 Que. K.B. 480.

(§ II—28)—SCALE OF TAXATION.

Peppiatt v. Reeder, 8 O.W.N. 517.

(§ II—28)—ACTION IN SUPREME COURT AGAINST SEVERAL DEFENDANTS—VERDICT OF JURY—DAMAGES WITHIN COMPETENCE OF COUNTY COURT—TITLE TO LAND DIS-

PUTED BY TWO DEFENDANTS—SCALE OF COSTS—SET-OFF—DISCRETION—RULE 649—JUDICATURE ACT, SEC. 74.

Liboirou v. McCormack, 8 O.W.N. 400.

(§ II—35)—STATUTORY TARIFF—APPLICATION OF.

The new tariff of costs in Ontario which became operative September 1, 1913, applies to all taxations between party and party after that date. [Re Solicitors, 6 O.W.N. 625, followed.]

Volcanic Oil and Gas Co. v. Chaplin, 22 D.L.R. 708, 8 O.W.N. 66.

(§ II—60)—DRAINAGE REFEREE—POWER TO MAKE RULES REGARDING.

Subject to the general rules, as to costs under the Drainage Act, the drainage referee has power to make any order he may see fit, as to the payment of costs, and may make a general rule that in all drainage cases for the year 1915, each party must pay its own costs, unless in some special case the referee thinks such general rule would not be reasonable.

Tp. of Colchester North v. Tp. of Anderdon; Tp. of Gosfield North v. Tp. of Anderdon, 21 D.L.R. 277.

[Reversed in 24 D.L.R. 143.]

CO-TENANCY.

(§ II—5)—CREATION—TESTAMENTARY GIFT—EQUAL DIVISIONS.

A testamentary gift "to be divided" between two or more, means an equal division and creates a tenancy in common. [Re Hislop, 7 O.W.N. 614, affirmed.]

Re Hislop, 22 D.L.R. 710, 8 O.W.N. 53. [Referred to in Re Chatham Glebe Trust, 22 D.L.R. 798.]

COUNCIL.

See Municipal Corporations; Elections; Officers.

COUNTERCLAIM.

See Set-off and Counterclaim.

COUNTY COURT.

See Courts.

COURSE OF EMPLOYMENT.

See Master and Servant.

COURTS.

I. JURISDICTION AND POWERS IN GENERAL.

- A. In general; inherent powers.
- B. Over non-residents; territorial limitations.
- C. Relation to other departments of Government.
- D. Jurisdiction over associations, etc.; conclusiveness of decisions of their tribunals.
- E. Legislative power as to.
- F. Power of municipality over.
- G. Loss of jurisdiction.

II. PROVINCIAL COURTS.

- A. Jurisdiction.
- B. Terms; place of sitting.
- C. Transfer of cause.
- D. Opinions.

III. FEDERAL COURTS.

- A. Suits by or against Government or Government officers.
- B. Suits against Crown.
- C. Federal questions.
- D. As dependent on citizenship.
- E. As dependent on amount.
- F. In equity; following provincial practice; effect of provincial laws.
- G. Ancillary jurisdiction.
- H. Crimes.
- I. Districts.
- J. Transfers between districts or Courts.

IV. CONFLICT OF AUTHORITY; RELATION OF PROVINCE TO FEDERAL.

- A. Exclusiveness of jurisdiction first acquired.
- B. Interference with other Courts; injunction.
- C. Property in custody of Courts or officers.
- D. When provincial or Dominion jurisdiction exclusive; limitations upon.

V. RULES OF DECISION.

- A. In general.
- B. Stare decisis; previous decisions of same Court.
- C. Construction and constitutionality of statutes or ordinances.
- D. Provincial Courts following Federal decisions.
- E. Following decisions of Courts of other province or country.
- F. Federal Courts following provincial decisions.

Jurisdiction to enforce agreements respecting lands situated outside of jurisdiction, see Specific Performance; Vendor and Purchaser.

Transfer of cause, see Removal of Causes.

Annotations.

Judicial discretion; appeals from discretionary orders: 3 D.L.R. 778.

Jurisdiction; criminal information: 8 D.L.R. 571.

Jurisdiction as to foreclosure under land titles registration: 14 D.L.R. 301.

Jurisdiction as to injunction; fusion of law and equity as related thereto: 14 D.L.R. 460.

Jurisdiction; power to grant foreign commission: 13 D.L.R. 338.

Jurisdiction; "view" in criminal case: 10 D.L.R. 97.

Power of Legislature to confer authority on Masters: 24 D.L.R. 22.

I. Jurisdiction and powers in general.

- A. IN GENERAL; INHERENT POWERS.

(§ I A—2)—POWER OF COURT TO ORDER EXAMINATION.

The Court will not order and has no power to enforce an order for any further examination of the plaintiff in an action under the Workmen's Compensation Act, R.S.Q., arts. 7338-7346, where he has already submitted, at the request of the defendant, to an examination on the morning of the trial.

Martin v. Cape, 23 D.L.R. 869, 47 Que. S.C. 390.

(§ I A—2)—JURISDICTION OF DISTRICT REGISTRAR—GARNISHMENT.

A district registrar has jurisdiction to grant a garnishee order against a partnership.

Hemphill v. Bell, 9 W.W.R. 626.

B. OVER NON-RESIDENTS; TERRITORIAL LIMITATIONS.

(§ I B 1—10)—CONCLUSIVENESS OF PROBATE IN QUEBEC OF HOLOGRAPH WILL—ONTARIO COURT.

The admission to probate by the Superior Court, Quebec, of a holograph will executed in accordance with the laws of that province is not a judicial act conclusive upon an Ontario Court in determining the question whether the testator had changed his domicile to Ontario after making such will, and by his subsequent marriage in Ontario revoked the holograph will at least as regards property in Ontario; a probate in the province of Quebec differs from the proof of a will in a Surrogate Court in Ontario, the probate in Quebec being issued as a matter of course upon the filing of a petition and an affidavit shewing the due execution of the will.

Seifert v. Seifert, 23 D.L.R. 440, 32 O.L.R. 433, 7 O.W.N. 440.

(§ I B 1—10) — DIVISION COURTS — TERRITORIAL JURISDICTION—CAUSE OF ACTION, WHERE ARISING—CONTRACT BY—CORRESPONDENCE—TRANSFER OF CAUSE TO DEBTOR'S PLACE OF RESIDENCE.

McNeilly v. Bennett, 25 D.L.R. 785, 34 O.L.R. 400, 9 O.W.N. 37.

(§ I B 1—10) — JURISDICTION OF SUPREME COURT OF ONTARIO—FOREIGN LANDS—ACTION BY JUDGMENT CREDITOR TO SET ASIDE CONVEYANCE OF, AS FRAUDULENT—PARTIES RESIDENT IN ONTARIO—PLEADING—STATEMENT OF CLAIM—CAUSE OF ACTION.

Canadian Land Investment Co. v. Phillips, 7 O.W.N. 652.

(§ I B 3—33)—FORECLOSURE OF LAND CONTRACT—PROPERTY SITUATED OUT OF JURISDICTION.

A Court of equity has jurisdiction to grant a decree in personam in foreclosure actions respecting lands situated out of the jurisdiction, providing the defendant resides within the jurisdiction. [Toller v. Carteret, 2 Vern. 494; Paget v. Ede, L.R. 18 Eq. 118, applied.]

Plainview Farming Co. v. Transcontinent-

al Townsite Co., 25 D.L.R. 594, 9 W.W.R. 247, 32 W.L.R. 499, 25 Man. L.R. 677.

C. RELATION TO OTHER DEPARTMENTS OF GOVERNMENT.

(§ I C 1—46)—JURISDICTION OVER EXECUTIVE GOVERNMENT—DISTRIBUTION OF PUBLIC FUNDS.

The powers conferred by a statute on the executive government respecting the payments or disposition of certain funds are subject to the review of and construction by the judiciary, and does not extend to the disposition of money, the right to which is *sub judice inter partes* and held *in medio* by the order of the Court. [Judgment of Canada Supreme Court reversed; Irvine v. Hervey, 13 D.L.R. 868, 47 N.S.R. 310, affirmed.]

Eastern Trust Co. v. Mackenzie, Mann & Co., 22 D.L.R. 410, [1915] A.C. 750, 113 L.T. 346, 31 W.L.R. 248.

(§ I C 3—108)—JURISDICTION OF SUPERIOR COURT—MUNICIPAL MATTERS—ILLEGAL TAX VALUATIONS.

A direct action taken by a ratepayer against the actions of a municipal council for illegal tax valuations will only be maintained when the result of these actions would be unjust, arbitrary and against the public interest, as the Superior Court should not interfere with the administration of municipal matters nor decide a question left to the approbation of the municipal council unless authorized therefor by a formal text of the law.

Rivard v. Parish of Wickham, 47 Que. S.C. 441.

(§ I C 3—110)—POWER TO QUASH BY-LAWS PASSED BY POLICE COMMISSIONERS.

The power of the Court to quash by-laws of municipal corporations conferred by sec. 283 of the Municipal Act, R.S.O. 1914, ch. 192, does not include by-laws passed by Police Commissioners; the latter by-laws are not subject to the procedure of a summary motion to quash. [McGill v. License Comm'rs, 21 Ont. R. 665; Winterbottom v. Police Comm'rs, 1 O.L.R. 549, cited. John Deere Plow Co. v. Wharton, 18 D.L.R. 353, distinguished.]

Re Major Hill Taxicab Co. and City of Ottawa, 21 D.L.R. 495, 33 O.L.R. 243, 8 O.W.N. 59.

(§ I C 3—113)—REVIEW OF DISCRETION AS TO GRANTING LIQUOR LICENSES.

Municipal councils have an absolute discretion to grant or refuse the confirmation of a certificate of license for the sale of spirituous liquors, and Courts of justice have no jurisdiction to intervene in these discretionary matters.

Latour v. City of Montreal, 48 Que. S.C. 61.

II. Provincial Courts.

A. JURISDICTION.

(§ II A—150)—INFERIOR COURT—OBJECTION FOR WANT OF JURISDICTION.

Where an inferior Court had no jurisdic-

tion in the matter from the beginning, the objection of want of jurisdiction is not waived by taking a step in a cause before it, or by failure to object at the commencement of the proceedings; but, if the jurisdiction is contingent, the defendant must object at the proper time if he desires to destroy the jurisdiction, and in default cannot do so later. [Moore v. Gamgee, 25 Q.B.D. 244, 248; Farquharson v. Morgan, 70 L.T.R. 152, referred to.]

Larson v. Anderson, 23 D.L.R. 659, 8 S.L.R. 177, 8 W.W.R. 758.

(§ II A—150) — LOCAL MASTER — JURISDICTION AS TO COSTS PENDENTE LITE.

A Local Master of the Supreme Court of Saskatchewan has no jurisdiction under Sask. r. 620 to entertain an application to dispose of the costs of an action in that Court where the debt sued for had been paid *pendente lite*.

Larson v. Anderson, 23 D.L.R. 659, 8 S.L.R. 177, 8 W.W.R. 758.

(§ II A—150)—COUNTY COURTS—JURISDICTION OF JUNIOR JUDGE—FIXING ADDITIONAL SITTINGS OF COURT—ACQUIESCENCE OF SENIOR JUDGE — COUNTY COURTS ACT, R.S.O. 1914, CH. 58, SECS. 4, 6.

Re Badder v. Ontario Cannery, 7 O.W.N. 839.

(§ II A 3—160)—DIVISION COURTS—JURISDICTION—JURY TRIAL—IRREGULARITY—WAIVER—CLAIM FOR DAMAGES FOR CONVERSION OF GOODS—AMOUNT IN EXCESS OF JURISDICTION IN ACTIONS FOR TORT—CLAIM ACTUALLY BASED ON CONTRACT—AMENDMENT—PROHIBITION.

Cordingley v. Williamson, 8 O.W.N. 536.

(§ II A 3—160)—DIVISION COURTS—JURISDICTION—CLAIM AGAINST GARNISHEES—AMOUNT INVOLVED—ISSUE AS TO VALIDITY OF ASSIGNMENT OF MONEYS ATTACHED—DIVISION COURTS ACT, R.S.O. 1914, CH. 63, SEC. 146—"DEBT OWING OR ACCRUING."

Re Merchants Bank of Canada v. Neely, 9 O.W.N. 333.

(§ II A 3—161)—JURISDICTION OF SUPERIOR COURT—AMOUNT OF RENT CLAIMED.

In an action between lessor and lessee the value or the amount of the rent claimed determines the competence of the Court. Thus there will be within the exclusive jurisdiction of the Circuit Court an action based on a yearly lease at a rent of \$780, which demands at the time the condemnation of the defendant to pay the \$30, balance of the rent due and the resiliation of the lease.

Stewart v. Jubb, 47 Que. S.C. 366.

(§ II A 3—161) — DIVISION COURT — JURISDICTION—AMOUNT IN CONTROVERSY — AMENDMENT — PROHIBITION — COSTS.

Johnston v. Cayuga, 7 O.W.N. 751.

(§ II A 3—164)—COUNTY COURT—PLEA OF SET-OFF EXCEEDING JURISDICTIONAL AMOUNT.

The County Court of New Brunswick has no jurisdiction to entertain a set-off where the amount claimed by the defendant is in excess of the jurisdiction of the Court, unless part of the claim is abandoned so as to bring the claim within the jurisdictional amount.

Windsor v. Young, 24 D.L.R. 652, 43 N.B.R. 313.

(§ II A 4—165)—OF DIVISION COURT—TITLE TO LAND—BUILDING COVENANT.

Section 61 of the Division Courts Act, R.S.O. 1914, ch. 63, which denies a Division Court jurisdiction in actions where the title to land is involved, applies to an action for the return of a deposit on a contract for the sale of land owing to a defect in the title, because of restrictive building covenant.

Luttrell v. Kurtz, 25 D.L.R. 240, 34 O.L.R. 586, 9 O.W.N. 151.

(§ II A 4—165) — JURISDICTION OF LOCAL JUDGE — FORECLOSURE ACTION — JUDGMENT AS TO TITLE.

Loomis v. Abbott, 25 D.L.R. 759, 9 W.W.R. 676.

(§ II A 5—172)—POWER OF JUDGE IN CHAMBERS—DEVOLUTION OF ESTATES ACT—RELIEF TO WIDOW.

One James Ostrander, domiciled in Alberta, died there leaving real and personal property situate in both Alberta and Saskatchewan. His will disposed of the whole of his property, but made no provision for his widow, who was residing apart from her husband in Saskatchewan. The widow applied for relief under the provisions of the Devolution of Estates Act as amended by ch. 13 of the Statutes of 1910-11. The application was made by notice of motion to a Judge in Chambers, and came before Newlands, J., who held, following *Re Independent Order of Foresters*, 13 W.L.R. 409, that the application should have been made to the Court presided over by a single Judge, and he accordingly dismissed the application. On appeal:—Held, that a Judge in Chambers has power to act for the Court generally unless the statute giving the authority contains words to deprive him of such jurisdiction, and there being nothing in the statutes applicable to the present case to oust such jurisdiction, the application was properly made to a Judge in Chambers.

Re Ostrander Estate, 8 S.L.R. 132, 30 W.L.R. 890, 8 W.W.R. 367.

(§ II A 6—175)—COURT OF APPEAL, B.C.

The jurisdiction of the former full Court of British Columbia is by sec. 6 of the Court of Appeal Act, B.C., conferred on the Court of Appeal as of April 25, 1907, not 1897, as erroneously printed in the B.C. statutes, the correct date appearing in the original roll and being the date of the passing of the Court of Appeal Act.

Rex v. Kwong Yick Tai, 22 D.L.R. 323, 24 Can. Cr. Cas. 28, 21 B.C.R. 127, 8 W.W.R. 808.

(§ II A 6—177)—CRIMINAL JURISDICTION — CROWN RULES.

The criminal rules (Ont. Crown Rules 1279-1288) as to certiorari, passed in 1908 by the Supreme Court of Judicature for Ontario under the authority of Cr. Code, sec. 576, remain in effect as to the "Supreme Court of Ontario" since the reorganization of the former Court so far as they are applicable, although there is no longer a "Divisional Court" to which by Crown r. 1287 an appeal is given by leave.

Rex v. Titchmarsh, 22 D.L.R. 272, 24 Can. Cr. Cas. 38, 32 O.L.R. 569, 7 O.W.N. 505.

C. TRANSFER OF CAUSE.

(§ II C—185) — JURISDICTION OF CIRCUIT COURT—TRANSFER OF CAUSE FROM SUPERIOR COURT.

An action within the exclusive competence of the Circuit Court, but which is brought in the Superior Court, will be referred on declinatory exception to the Circuit Court, and the plaintiff cannot by amendment change the nature of the action and thus give jurisdiction to the Superior Court which from the time of the origin of the action was incompetent *ratione materiae*. In such case the Superior Court has only jurisdiction over the declinatory exception, and if it finds the latter well founded it should refer the case to the Circuit Court without pronouncing upon the amendment filed by the plaintiff.

Stewart v. Jubb, 47 Que. S.C. 366.

D. OPINIONS.

(§ II D—190)—COUNTY COURT—SENIOR AND JUNIOR JUDGES—ORDERS AND OPINIONS.

The powers and duties of the junior and senior Judges of the County Court, although divided for the convenience of the public, are in respect of orders therein made identical, and neither can abdicate his powers or divide his duties in interference with the rights of litigants.

Davis Acetylene Gas Co. v. Morrison, 23 D.L.R. 871, 34 O.L.R. 155, 8 O.W.N. 474.

III. Federal Courts.

B. SUITS AGAINST CROWN.

(§ III B—205)—EXCHEQUER COURT—"PUBLIC WORK"—GOVERNMENT DREDGE.

Held, following the views expressed by the Judges of the Supreme Court in the case of *Paul v. The King*, 38 Can. S.C.R. 126, that a dredge belonging to the Dominion Government is not a "public work" within the meaning of sec. 20 (c) of the Exchequer Court Act.

Montgomery v. The King (No. 2), 15 Can. Ex. 374.

C. FEDERAL QUESTIONS.

(§ III C—210)—JURISDICTION OF EXCHEQUER COURT—TRADE MARKS—RECTIFICATION OF REGISTER.

The Exchequer Court of Canada has juris-

diction, under the Trade Mark and Design Act, R.S.C. 1906, ch. 71, and sec. 23 of the Exchequer Court Act, R.S.C. 1906, ch. 140, to order the rectification of the register of trade marks notwithstanding that the matter has not been referred to the Court by the Minister under the provisions of the Trade Mark and Design Act. [Re Vulcan Trade Mark, 22 D.L.R. 214, 15 Can. Ex. 265, affirmed.]

Re Vulcan Trade Mark. 24 D.L.R. 621, 51 Can. S.C.R. 411.

D. AS DEPENDENT ON CITIZENSHIP.

(§ III D—215) — ACTIONS IN EXCHEQUER COURT—FOREIGN PARTNERSHIP.

Under the general rules and orders regulating the practice and procedure in cases in the Exchequer Court of Canada, a foreign partnership has no right to proceed as such in the Court, but must sue or petition in the names of the individual partners.

North Atlantic Trading Co. v. The King, 15 Can. Ex. 14.

IV. Conflict of authority, relation of Province to Federal.

D. WHEN PROVINCIAL OR DOMINION JURISDICTION EXCLUSIVE; LIMITATIONS UPON.

(§ IV D 1—270)—CANADA SUPREME COURT—PROVINCIAL APPEALS.

In order that there should be jurisdiction in the Supreme Court of Canada under sec. 37, sub-sec. (b), of the Supreme Court Act, in an appeal from the provincial Court of Appeal where the case did not originate in a Superior Court, it is not sufficient that in respect to some part of the action, some claim made in it or some relief which may be accorded, there is concurrent jurisdiction in both the superior and inferior Courts; the jurisdiction to enable such appeal must be concurrent over the action as a whole. [Appeal from 18 D.L.R. 555, 20 B.C.R. 156, quashed.]

Champion v. World Building, 22 D.L.R. 465, 50 Can. S.C.R. 382, 7 W.W.R. 1162.

V. Rules of decision.

E. FOLLOWING DECISIONS OF COURTS OF OTHER PROVINCE OR COUNTRY.

(§ V E—315)—ENGLISH DECISIONS.

The Supreme Court of Alberta is not bound by the decisions of the English Court of Appeal.

Re Western Canada Fire Ins. Co., 22 D.L.R. 19, 8 A.L.R. 348, 7 W.W.R. 1365, 30 W.L.R. 648.

(§ V E—315)—DECISIONS UPON CRIMINAL CODE.

The Court of Criminal Appeal in one province should follow the decision of a Court of like jurisdiction in another province in the interpretation of the Cr. Code unless very strong ground be shewn for a different course.

Rex v. Sam Jon, 24 Can. Cr. Cas. 334, 20 B.C.R. 549.

COVENANTS AND CONDITIONS.

I. IN GENERAL.

II. CONSTRUCTION; VALIDITY; EFFECT.

- A. In general.
- B. Encumbrances; assessments.
- C. Warranty.
- D. Restricting use or disposition of property.

III. PERFORMANCE; BREACH; ENFORCEMENT; WHO LIABLE.

- A. In general.
- B. What constitutes a breach; effect.
- C. Who may enforce.
- D. Who liable or bound.

IV. RUNNING WITH THE LAND.

V. EXTINGUISHMENT OF, OR DISCHARGE FROM, COVENANT.

In contracts generally, see Contracts.

As to conditions in insurance policy, see Insurance.

In lease, see Landlord and Tenant, II.

Condition in mortgage, see Mortgage; Chattel Mortgage.

Notice of, from record, see Records and Registry Laws; Land Titles.

Condition of sale, see Sale, I.

In contract for sale of land, see Vendor and Purchaser.

I. In general.

(See previous Annual Digests.)

II. Construction; validity; effect.

B. ENCUMBRANCES; ASSESSMENTS.

(§ II B—10)—DUTY TO DISCLOSE SERVITUDES.

Where there is a clause in a deed of sale "free from incumbrances" (*franc et quitte*), the vendor is bound to disclose to the purchaser the existence of a non-apparent servitude, and cannot claim that the purchaser should have searched the records and so informed himself, but he will be excused by shewing that the purchaser knew of the servitude at the time of sale.

Marcil v. Legault, 23 D.L.R. 756, 24 Que. K.B. 1.

III. Performance; breach; enforcement; who liable.

(See previous Annual Digests.)

CREDITORS' ACTION.

See Insolvency; Assignment for Creditors; Fraudulent Conveyances; Corporations and Companies, VI.

Annotations on, see 1 D.L.R. 76; 1 D.L.R. 841.

CREDITORS' RELIEF ACT.

As to distribution of fund realized on execution, see Execution; Attachment; Garnishment; Levy and Seizure.

CRIMINAL LAW.

I. CRIMINAL LIABILITY.

- A. In general.
- B. Capacity to commit; irresponsibility; intent; knowledge; insanity.
- C. Attempts.
- D. Solicitation.
- E. Parties to offences.
- F. Instigation or consent, as defence.

II. PROCEDURE.

- A. In general.
- B. Protection and rights of accused generally; electing mode of trial.
- C. Warrant; commitment.
- D. Necessity of indictment, presentment or information.
- E. Concurrent proceedings.
- F. Pleading; motions; demurrer.
- G. Former jeopardy.
- H. Determining sanity of accused; proceeding with trial.

III. OFFENCES AGAINST DIFFERENT SOVEREIGNTIES.

IV. SENTENCE AND IMPRISONMENT.

- A. In general.
- B. Cruel and unusual punishment.
- C. Extent of punishment generally; excessive fines.
- D. Time of imprisonment; cumulative and indeterminate sentences.
- E. Place of imprisonment.
- F. Punishment of second offences and habitual criminals.
- G. Suspension or stay of sentence; time of imposing.
- H. Parole; reprieve; pardon; ticket of leave.

V. RECORD.

VI. REMOVAL FOR TRIAL.

As to place of trial, see Venue.

Various particular crimes, see Assault and Battery; Bigamy; False Pretences; Forgery; Gaming; Homicide; Intoxicating Liquors; Malicious Mischief; Nuisances; Obstructing Justice; Perjury; Receiving Stolen Property; Robbery; Seduction; Theft.

As to arrest, see Arrest.

Conspiracy to commit crime, see Conspiracy.

Extradition, see Extradition.

Civil liability for false arrest and imprisonment, see False Imprisonment; Malicious Prosecution.

Habeas corpus to secure release of prisoner, see Habeas Corpus.

Summary criminal jurisdiction, see Justice of Peace; Summary Conviction.

Review of conviction, see Certiorari.

Annotations.

Criminal trial; continuance and adjournment; Criminal Code, 1906, sec. 901: 18 D.L.R. 223.

Cr. Code (Can.); granting a "view"; effect as evidence in the case: 10 D.L.R. 97.

Insanity as a defence; irresistible impulse; knowledge of wrong: 1 D.L.R. 287.

Trial; Judge's charge; misdirection as a "substantial wrong"; Criminal Code (Can. 1906, sec. 1019): 1 D.L.R. 103.

Leave for proceedings by criminal information: 8 D.L.R. 571.

Orders for further detention on quashing convictions; Cr. Code, sec. 1120: 25 D.L.R. 649.

What are criminal attempts: 25 D.L.R. 8.

I. Criminal Liability.

B. CAPACITY TO COMMIT; IRRESPONSIBILITY; INTENT; KNOWLEDGE; INSANITY.

(§ I B—5) — TEMPORARY INSANITY — INDUCING CAUSE—EXPERT TESTIMONY ON MENTAL CONDITION.

On a charge of murder and a defence of insanity at the time of the commission of the offence, the onus is upon the accused of proving that she was at the time she committed the act in such a state of mind that she was incapable of appreciating the nature and quality of her act and of knowing that it was wrong; and whether statements made to the accused by her husband as to his acts of infidelity with the deceased and other women would have a tendency to make her temporarily insane is a question of fact as to which expert testimony must first be offered before proof of any such statements by the husband becomes relevant. [R. v. Tuckett, 1 Cox C.C. 103, applied.]

Rex v. Jennie Hawkes, 25 D.L.R. 631, 25 Can. Cr. Cas. 29, 9 W.W.R. 445, 32 W.L.R. 720.

C. ATTEMPTS.

(§ I C—10)—DEFINITION OF.

An attempt to commit a crime is an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted. [See Annotation on Criminal Attempts, 25 D.L.R. 8.]

Rex v. Snyder, 25 D.L.R. 1, 24 Can. Cr. Cas. 101, 34 O.L.R. 318, 8 O.W.N. 594.

E. PARTIES TO OFFENCES.

(§ I E—20)—CONVICTION OF PERSONS JOINTLY CHARGED WITH ARSON—SUFFICIENCY OF.

A conviction of two persons jointly charged with arson will be set aside where the evidence warrants a finding that the act was committed either by one or the other of them, but does not enable the Court to determine which one committed the offence nor justify a finding implicating them both.

Rex v. Upton, 25 Can. Cr. Cas. 28, 9 O.W.N. 74.

F. INSTIGATION, OR CONSENT, AS DEFENCE.

(§ I F—25)—CONDONATION OF OFFENCE BY PARTY AGGRIEVED AS DEFENCE.

A private party cannot by condoning or forgiving a personal injury done to himself

in the commission of crime thereby condone or pardon the offence against the King so as to enable the wrongdoer to defend on that ground an indictment preferred against him by the Crown.

Rex v. Strong, 24 Can. Cr. Cas. 430.

II. Procedure.

A. IN GENERAL.

(§ II A—30)—RIGHT OF CROWN TO STAND JURORS ASIDE.

The provisions of the Criminal Code relating to the right of the Crown to have jurors stand aside are in force in the province of Alberta.

Rex v. Murray & Mahoney, 9 W.W.R. 804, 25 Can. Cr. Cas.

(§ II A—31)—PRELIMINARY INQUIRY — CAPTION TO DEPOSITIONS.

It is not an objection that depositions taken in a preliminary inquiry have no formal caption to indicate the case in which they were taken if such depositions returned into the superior Court are physically attached to a document called the "statement of accused," which sets forth the charge and date of hearing and that the charge was read to the accused, and that on being given the statutory warning he made no statement, and it further appears from the depositions themselves that they refer to the charge so recited in the "statement of accused."

Rex v. McClain, 23 D.L.R. 312, 23 Can. Cr. Cas. 488, 8 A.L.R. 73, 7 W.W.R. 1134, 30 W.L.R. 388.

B. PROTECTION AND RIGHTS OF ACCUSED GENERALLY; ELECTING MODE OF TRIAL.

(§ II B—47)—DISCLOSING NAMES OF WITNESSES AGAINST HIM.

While no definite rule is laid down in the Criminal Code to compel the endorsing of the names of witnesses for the prosecution on a formal charge laid by the agent of the Attorney-General under Cr. Code sec. 873A (applicable in Alberta and Saskatchewan), the presiding Judge may give all necessary protection to the accused so that he may have a fair opportunity to defend himself; the name of any additional Crown witness not examined at the preliminary inquiry ought, as a matter of fairness, to be disclosed to the accused—at any rate if he asks for the information. [R. v. Greenslade, 11 Cox C.C. 412, referred to.]

Rex v. McClain, 23 D.L.R. 312, 23 Can. Cr. Cas. 488, 8 A.L.R. 73, 7 W.W.R. 1134, 30 W.L.R. 388.

(§ II B—47)—NAMES OF CROWN WITNESSES.

The context of secs. 874 to 876 of the Cr. Code makes sec. 876 (endorsing names of witnesses on bill of indictment) inapplicable to proceedings by formal charge in a province where there is no grand jury system, notwithstanding the extended meaning given to the word "indictment" by Cr. Code

sec. 2 (16); effect is to be given to the latter only in the event of the context being consistent therewith.

Rex v. McClain, 23 D.L.R. 312, 23 Can. Cr. Cas. 488, 8 A.L.R. 73, 7 W.W.R. 1134, 30 W.L.R. 388.

(§ II B—49)—SUMMARY TRIALS CLAUSES — THEFT.

An information for theft of property of less value than \$10 may be laid and preliminary inquiry held before a Justice of the Peace in New Brunswick in his capacity as such, although he was also a county stipendiary magistrate with power of summary trial under Part XVI of the Cr. Code (Code sec. 773), without any obligation to give the accused an opportunity to elect for a summary trial before such county stipendiary magistrate. [R. v. Wener, 6 Can. Cr. Cas. 406, cited.]

Rex v. Howe, 24 Can. Cr. Cas. 215, 42 N.B.R. 378.

(§ II B—49)—SUMMARY TRIAL—ACCUSED TO BE PERSONALLY PRESENT.

For the purpose of the summary trials clauses of the Criminal Code, the accused must be personally present; and it is not competent for a magistrate to proceed with a summary trial as for an indictable offence in the absence of the accused, although his counsel is present on his behalf prepared to make option under Code sec. 778 as to mode of trial, and although the latter produces a written authority in that behalf signed and sworn to by the absent defendant. [R. v. Lepine, 4 Can. Cr. Cas. 145; Re Nunn, 2 Can. Cr. Cas. 429; R. v. Traynor, 4 Can. Cr. Cas. 410; and R. v. Sarault, 9 Can. Cr. Cas. 448, referred to.]

R. v. Romer; R. v. Johnson; R. v. Farrell, 23 Can. Cr. Cas. 236.

(§ II B—49) — SUMMARY TRIAL — FULL ANSWER AND DEFENCE.

The word "answer" as used in Code sec. 786 in the phrase "full answer and defence" has no special reference to the question to be put by the magistrate to the accused in certain cases on taking an election for or against summary trial, but applies alike to summary trial cases in which there is no right of election by the accused.

R. v. Romer; R. v. Johnson; R. v. Farrell, 23 Can. Cr. Cas. 236.

(§ II B—49)—FULL ANSWER AND DEFENCE.

The words "full answer and defence" used in Code secs. 715, 786 and 942, mean that the accused can invoke every means both in law and in fact to meet the charge; the word "answer" being specially applicable to a defence on the facts and the word "defence" applying both to matters of testimony and matters of law.

R. v. Romer; R. v. Johnson; R. v. Farrell, 23 Can. Cr. Cas. 236.

(§ II B—49)—SUMMARY TRIAL—CHARGE IN WRITING.

Where there is already a written information in respect of the charge of an indictable

offence, which a magistrate is about to try under Part XVI of the Cr. Code, such information may be adopted as a "charge in writing," which he shall read to the accused, and it is not in such case necessary for the magistrate to again reduce the charge to writing; but if the accused were before the magistrate without any preliminary information having been laid for the offence which is to be the subject of the summary trial, it would then be the magistrate's duty to write out the charge.

Rex v. James, 25 D.L.R. 476, 25 Can. Cr. Cas. 23, 9 A.L.R. 66, 9 W.W.R. 235, 32 W.L.R. 528.

(§ II B-49)—SUMMARY TRIAL—CONSENT TO.

If the accused has been illegally arrested without a warrant on a charge of keeping a disorderly house, and on being brought before the magistrate for summary trial takes objection to his jurisdiction, he will have no authority to proceed with the trial notwithstanding Cr. Code sec. 774, declaring the jurisdiction of the magistrate to be absolute for that offence and not dependent on the consent of the accused to summary trial.

Rex v. Wilson, 24 Can. Cr. Cas. 370, 32 W.L.R. 284, 9 W.W.R. 47.

(§ II B-49)—SUMMARY TRIAL WITHOUT CONSENT.

The absolute jurisdiction of a police magistrate in Saskatchewan of a city having a population of over 2,500 is retained under Code, secs. 776 and 777, as to the offences specified in Code, sec. 773 (including that of unlawful wounding), and the consent of the accused to summary trial is required by Code secs. 777 and 778, only in such cases in which there is additional jurisdiction under sec. 777. [*R. v. Hayward*, 6 Can. Cr. Cas. 399, 5 O.L.R. 65, applied.]

Re Worrell, 21 D.L.R. 519, 24 Can. Cr. Cas. 88, 8 S.L.R. 140, 8 W.W.R. 231.

[Affirmed in 21 D.L.R. 522, 8 S.L.R. 140, 24 Can. Cr. Cas. 92.]

(§ II B-49)—SUMMARY TRIAL WITHOUT CONSENT.

Where a magistrate has jurisdiction over the particular offence either as one for which a summary conviction may be made or as one for which he has power of summary trial as for an indictable offence without the consent of the accused, it is essential to the exercise of the latter jurisdiction that the magistrate should expressly declare on commencing the trial that he will proceed under the "summary trials" clauses of the Code. [*R. v. Belmont*, 23 Can. Cr. Cas. 89, followed.]

R. v. Romer; *R. v. Johnson*; *R. v. Farrell*, 23 Can. Cr. Cas. 235.

(§ II B-49)—SUMMARY TRIAL OF INDICTABLE OFFENCE.

A magistrate holding a summary trial for an indictable offence under Part XVI. of the Code is not authorized, after hearing both sides, to adjourn the trial and to remand the

accused for trial "until called on," where the evidence does not satisfy the magistrate either of the guilt or innocence of the accused; the prisoner is in such case entitled to the benefit of the doubt and to an acquittal, and prohibition will be granted to restrain the magistrate from proceeding to hear further evidence alleged to have been discovered by the Crown, and in respect whereof the accused was again summoned to receive judgment upon the original charge.

Rex v. White, 24 Can. Cr. Cas. 277, 34 O.L.R. 370, 9 O.W.N. 10.

(§ II B-49)—SUMMARY TRIAL—ELECTION—HABEAS CORPUS.

Where a committal for trial for an offence alleged to have been committed in a city to which sub-sec. 2 of sec. 777 applies has been made by a county stipendiary not authorized to hold a summary trial in Nova Scotia under sec. 777, sub-sec. 2, the Superior Court may enable the prisoner to elect trial before the city stipendiary magistrate having the extended jurisdiction of sec. 777 by granting his application for writs of habeas corpus and *recipias corpus* to transfer him from the gaol to the city magistrate's Court.

Rex v. Foley, 24 Can. Cr. Cas. 150.

(§ II B-49)—RE-ELECTION FOR JURY TRIAL.

A prisoner who has duly elected in favour of a speedy trial before a county Judge without a jury has no right thereafter to re-elect in favour of a jury trial. [*R. v. Keefer*, 5 Can. Cr. Cas. 122, 2 O.L.R. 572, followed; *R. v. Ballard*, 1 Can. Cr. Cas. 96, 28 Ont. R. 489, and *R. v. Prevost*, 4 B.C.R. 326, referred to.]

Rex v. Howe, 24 Can. Cr. Cas. 215, 42 N.B.R. 378.

(§ II B-49)—SUMMARY TRIAL—DEPOSITIONS AND NOTES OF EVIDENCE.

Where a magistrate holds a summary trial under Part XVI of the Criminal Code for an indictable offence, and the accused pleads not guilty, it is obligatory that the depositions should be taken down in writing, and where there are no notes of the evidence the conviction will be set aside on certiorari; the absence of any notes of evidence is irreconcilable with secs. 793 and 1124, which latter section is made applicable by Cr. Code, sec. 797 (2). [*R. v. Harris*, 18 Can. Cr. Cas. 392; *Re Lacroix*, 12 Can. Cr. Cas. 297; and *R. v. Jung Lee*, 22 Can. Cr. Cas. 63, followed.]

Perron v. Senecal, 24 Can. Cr. Cas. 358, 17 Que. P.R. 134.

C. WARRANT; COMMITMENT.

(§ II C-51)—SUFFICIENCY OF—SUMMARY TRIAL.

Where there is a good and valid conviction by two Justices sitting together as a summary trial Court under Part XVI of the Cr. Code, a warrant of commitment thereunder is validated under Cr. Code, sec. 1130, although signed and sealed by one of such

Justices only and although it recites that the accused was convicted before the signing Justice and makes no mention of the other having participated in the trial.

Rex v. James, 25 D.L.R. 476, 25 Can. Cr. Cas. 23, 9 A.L.R. 66, 9 W.W.R. 235, 32 W.L.R. 528.

(§ II C—51)—COMMITMENT FOR TRIAL—ORDER FOR FURTHER DETENTION.

Where a magistrate has proceeded to convict in a case in which he had jurisdiction only to hold a preliminary inquiry and commit for trial, the Court on quashing the conviction may, if the ends of justice require it, direct the further detention of the accused in custody until he can be brought up for the preliminary inquiry, although there was no habeas corpus application. [R. v. Frejd, 18 Can. Cr. Cas. 110, 22 O.L.R. 566, applied; and see Annotation on "Orders for further detention," 25 D.L.R. 649.]

Rex v. Manzi, 25 D.L.R. 648, 24 Can. Cr. Cas. 359, 8 O.W.N. 533.

D. NECESSITY OF INDICTMENT, PRESENTMENT OR INFORMATION.

(§ II D—56)—CRIMINAL INFORMATION FOR LIBEL—LEAVE TO FILE.

Leave to file a criminal information for libel can only be granted by the Full Court in Nova Scotia, i.e., the provincial Supreme Court, sitting en banc; a single Judge, although presiding over a Court for the disposal of criminal business in a county, has no jurisdiction to grant the leave. [R. v. Beale, 1 Can. Cr. Cas. 235, 11 Man. L.R. 448, and R. v. Labouchere, 12 Q.B.D. 320, 15 Cox C.C. 415, referred to.]

Rex v. Burgess, 21 D.L.R. 333, 23 Can. Cr. Cas. 424, 48 N.S.R. 241.

III. Offences against different sovereignties.
(See previous Annual Digests.)

IV. Sentence and imprisonment.

C. EXTENT OF PUNISHMENT GENERALLY;
EXCESSIVE FINES.

(§ IV C—118)—CORRECTION ON APPEAL.

Where the sentence passed by the Court below is declared erroneous, the Court hearing the appeal under Cr. Code, sec. 1018, may, on setting it aside, declare what the proper sentence should be, and remit the case with directions to pronounce the specific sentence declared by the Appellate Court.

Rex v. Spurdakes, 24 Can. Cr. Cas. 210, 40 N.B.R. 428.

F. PUNISHMENT OF SECOND OFFENCES AND HABITUAL CRIMINALS.

(§ IV F—130)—CONSIDERATION OF PRIOR CONVICTIONS.

Leave may be given to the Crown after verdict to adduce evidence of previous convictions of the accused for the information of the Court in determining the punishment.

[See also R. v. Bonnevillie, 10 Can. Cr. Cas. 376.]

Rex v. Rowluk, 24 Can. Cr. Cas. 127, 8 W.W.R. 995.

G. SUSPENSION OR STAY OF SENTENCE;
TIME OF IMPOSING.

(§ IV G—136)—SUSPENSION OF SENTENCE BY MAGISTRATE.

A magistrate holding a summary trial has power under Criminal Code sec. 1081 to suspend sentence in certain cases, but sentence cannot be suspended until there has been an adjudication of guilt.

Rex v. White, 24 Can. Cr. Cas. 277, 34 O.L.R. 370, 9 O.W.N. 10.

(§ IV G—139)—ALTERNATIVE OF LEAVING THE JURISDICTION—STAY.

Where a magistrate imposes a sentence of three months' imprisonment on convicting the accused tried before him under Part XVI, sec. 774, for an indictable offence, and at the same time directs that the accused be given time to leave the city by staying the issue of the commitment for forty-eight hours, the accused is free from arrest under that conviction on returning to the city more than three months after the commitment might have issued, for the sentence of commitment was then spent. (Per Galt, J.)

Rex v. Fitzpatrick, 25 D.L.R. 727, 25 Can. Cr. Cas. 42, 9 W.W.R. 191, 32 W.L.R. 423, 441, 25 Man. L.R. 627.

V. Record.

VI. Removal for trial.

(See previous Annual Digests.)

CROPS.

As rent, see Landlord and Tenant.

Priorities as to, see Execution; Levy and Seizure; Interpleader; Chattel Mortgage; Bills of Sale.

CROSS-EXAMINATION.

Of witnesses, see Witnesses.

CROWN.

I. IN GENERAL.

II. RIGHTS, POWERS AND LIABILITIES OF.

Crown land, see Public Lands.

Constitutional powers of, see Constitutional Law.

Expropriation by, see Eminent Domain; Damages.

Officers of, see Officers.

Crown railways, see Railways.

Intervention of Attorney-General in actions affecting Crown, see Parties.

I. In general.

(§ I—10)—AMENABLE TO COMMON LAW.

The Crown in its business dealings with individuals is subject to the common law.

Bonhomme v. Montreal Water & Power Co., 48 Que. S.C. 486.

II. Rights, powers and liabilities of.**(§ II—20)—SUBJECT TO ORDERS OF COURT.**

Where the Crown invokes the jurisdiction of the Court as a plaintiff, the Court may make all proper orders against it.

The King v. The "Despatch," 23 D.L.R. 351, 8 W.W.R. 1253, 32 W.L.R. 13.

[Reversed in 25 D.L.R. 221.]

CRUELTY.

To animals, see Animals.

Cruel treatment, see Divorce and Separation.

CURATOR (Que.).

See Guardian and Ward.

CURTESY (TENANCY BY THE).

See Dower; Husband and Wife; Descent and Distribution.

CUSTODY.

Of children, see Divorce and Separation, VI; Infants, I.

CUSTOM.

Evidence of custom, see Evidence.

Custom of broker's commissions, see Brokers; Principal and Agent.

(§ I—13)—RIGHT TO PUT MAKER'S NAME ON SIGN-BOARD.

Pursuant to a custom admitted by the parties, the maker of a sign-board has the right to make himself known by putting his name upon the board to indicate that he is the painter. There is no custom which permits a man who repairs a sign-board to efface the name of the person who originally made it and substitute his own, even with the consent of the owner. Such original maker has an interest to see that use of his work is not made to advertise another business house, and it is acting in a disloyal manner for one to put his name upon an electric sign made by another person.

Denis Advertising Signs v. Martel Stewart Co., 47 Que. S.C. 266.

CUSTOMS DUTIES.

See Duties; Taxation.

CY-PRES.

See Wills; Charities.

Annotation.

How doctrine applied as to inaccurate descriptions: 8 D.L.R. 96.

DAMAGES.**I. GENERAL PRINCIPLES; NOMINAL DAMAGES; PREVENTING UNNECESSARY AMOUNT.****II. EXEMPLARY OR PUNITIVE.****A. In general.****B. For act of servant; carrier's liability.****III. MEASURE OF COMPENSATION.****A. On contracts.****B. For telegrams.****C. Expulsion of or failure in duty to passenger.****D. In respect to freight or baggage.****E. Torts generally; breach of promise.****F. Fraud.****G. Assault; false imprisonment; malicious prosecution; abuse of process.****H. Libel or slander.****I. Personal injuries; death.****J. Injury; taking or detention of personal property.****K. Injury to real property; nuisance.****KK. Injury to business.****L. Condemnation or depreciation in value by eminent domain; expropriation.****M. In injunction.****N. In trade-mark, patent, and copyright cases.****O. Mental anguish.****P. Loss of profits.****Q. Time for which recoverable; prospective.****R. Counsel fees.****S. Mitigation; reduction.****T. Aggravation.****U. Apportionment.****IV. ASSESSMENT; DOUBLE OR TREBLE DAMAGES.****V. DIVISION OF DAMAGE.**

Review of, on appeal, see Appeal, VII.

Discretion as to granting new trial on excessive damages, see Appeal; New Trial.

Interest as, see Interest, I.

Liability of municipality for, see Municipal Corporations.

Allegations as to, see Pleading.

Right to set-off, see Set-off and Counterclaim.

Annotations.

Appellate jurisdiction to reduce excessive verdict: 1 D.L.R. 386.

Architect's default on building contract; liability: 14 D.L.R. 402.

Parent's claim under fatal accidents law; Lord Campbell's Act: 15 D.L.R. 689.

Property expropriated in eminent domain proceedings; measure of compensation: 1 D.L.R. 508.

I. General principles; nominal damages; preventing unnecessary amount.**(§ I—3)—NOMINAL DAMAGES—FAILURE TO INSTALL DENTIST'S SIGN.**

For every breach of contract which necessarily causes damage, the party breaking his contract can be condemned in nominal damages to be fixed by the Court; this warrants a judgment in favour of a dentist for failure of an electric company to install and light an electric sign advertising his business, although special damage could not be proved.

Audet v. Saraguay Electric & Water Co., 22 D.L.R. 493, 46 Que. S.C. 248.

II. Exemplary or punitive. (See previous Annual Digests.)

III. Measure of compensation.

A. ON CONTRACTS.

(§ III A 1—40)—BREACH—NON-DELIVERY.

The measure of damages for non-delivery of goods is the difference between the contract price and the full price in open market, at the date of contract, but damages for reduced output and disorganization of business on account of such non-delivery are too remote to be considered.

Dominion Textile Co. v. Diamond White-wear Co., 25 D.L.R. 241, 24 Que. K.B. 489.

(§ III A 1—40)—BREACH OF CONTRACT FOR SALE OF COMPANY SHARES—ESTIMATION OF VALUE.

Where no proof is available as to whether company shares have a market value, the damages for breach of a contract to deliver such shares may be assessed by reference to their intrinsic value ascertained from the value of the corporate assets and the amount of the company's liability. [*Crichfield v. Julia*, 147 Fed. Rep. (U.S.) 65, referred to.]

Johnson v. Roche, 24 D.L.R. 305, 49 N.S.R. 12.

(§ III A 1—40)—SALE OF GASOLINE ENGINE—FRAUD.

Although the buyer of a gasoline engine may have lost his right to rescind by keeping the engine after knowledge of the fraud of the seller's agent in misrepresenting the engine's capacity, he retains his right to counterclaim against the seller suing for the price, in respect of the loss he (the buyer) had sustained by relying upon the agent's statements; the measure of damages is the difference in price between the engine he got and an engine such as was represented.

Ontario Wind Engine v. Bunn, 21 D.L.R. 420, 8 S.L.R. 58, 8 W.W.R. 450, 31 W.L.R. 20.

(§ III A 1—40)—LOSS TO BUSINESS—REMOTENESS.

Damages for non-performance of the contract should comprise only what follows immediately and directly from such non-performance; they cannot extend to the loss of the advantages which might result to the industrial establishment from the execution of a public enterprise.

Browning v. The Masson Co., 24 Que. K.B. 389.

[Appealed to Canada Supreme Court.]

(§ III A 1—40)—BREACH OF CONTRACT TO TAKE ELECTRIC ENERGY SUPPLIED BY POWER COMPANY—MEASURE OF DAMAGES—PECULIAR COMMODITY—MONEY DAMAGES EQUIVALENT TO STIPULATED PRICE.

Kaministiquia Power Co. v. Superior Rolling Mills Co., 8 O.W.N. 518, 9 O.W.N. 96.

(§ III A 1—42a)—BUILDING CONTRACT—FAILURE TO COMPLETE WITHIN TIME.

A contractor who undertakes to complete a building within a certain time and in default to pay a liquidated amount as damages for each day's delay, will be held liable under the penal clause for this amount, even although the owner has suffered no prejudice on account of the delay, and has given supplementary contracts, which have caused the work to be delayed as the contractor, although free to accept such supplementary contracts, was not bound to do so. [*McDonald v. Hutchins*, 12 Que. K.B. 499, followed.]

Damphousse v. Valiquette, 24 D.L.R. 219, 24 Que. K.B. 62.

(§ III A 1—42a)—DELAY OF PERFORMING BUILDING CONTRACT—WAGES.

A delay in the performance of a building contract does not involve a liability for wages paid to men engaged in the installation of the plant, who have come to the buildings for that purpose before the buildings were ready for them.

Canada Foundry Co. v. Edmonton Portland Cement Co., 25 D.L.R. 683, 9 W.W.R. 395, 32 W.L.R. 684.

(§ III A 1—44)—FAILURE TO COMPLETE BRANCH LINE—LIABILITY TO BOND PURCHASERS.

Substantial damages, in an amount determinable from the evidence as to the loss sustained, may be awarded to purchasers of railway bonds, for the breach of an agreement by a railway company to build a branch line which, if completed, would secure their township better freight facilities, and on the strength of which agreement the bonds were purchased. [16 D.L.R. 361, 30 O.L.R. 44, affirmed.]

Wood v. Grand Valley R. Co., 22 D.L.R. 614, 51 Can. S.C.R. 283.

(§ III A 1—51)—AGENT ISSUING POLICY UNDER UNAUTHORIZED RATE—LIABILITY FOR LOSS.

In an action by an insurance company against their agent for issuing a policy under an unauthorized rate, the proper measure of damages is the loss the company is obliged to pay and not the difference between the premiums at which the policy was issued and the rate at which the risk would have been accepted.

Globe & Rutgers Fire Ins. Co. v. Wetmore & Co., 23 D.L.R. 33, 49 N.S.R. 55.

(§ III A 1—51)—WRONGFUL CLOSING OF MARGINS—STOCK BROKER.

Damages for the wrongful closing out of a margin account with grain brokers need not be fixed at the highest or "peak" price on exchange at which the plaintiff on a bought order might have sold during the period for which the transaction should have run. [*Michael v. Hart*, [1901] 2 K.B. 867, criticized; *Michael v. Hart*, [1902] 1 K.B. 490, and *Goodall v. Clark*, 23 O.L.R. 620, referred to.]

Nelson v. Baird, 22 D.L.R. 132, 25 Man. L.R. 244, 8 W.W.R. 144, 30 W.L.R. 822.

(§ III A 3—60)—SALE OF LANDS—DEFECT IN TITLE.

In the absence of fraud damages are not recoverable where the contract for sale of lands goes off for defect in title which the vendor cannot remove. [Bain v. Fothergill, L.R. 7 H.L. 158, referred to.]

Lobel v. Williams, 22 D.L.R. 127, 25 Man. L.R. 161, 7 W.W.R. 1042, 30 W.L.R. 352.

(§ III A 3—62)—BREACH OF CONTRACT TO SELL LAND.

For breach of a contract to sell land, a purchaser is not entitled to damages based upon the difference between the contract price and the value at the time of the breach, but the damages are limited to the return of the purchase money, if any, and interest and expenses to which he has been put in connection with the making of the contract or incurred on the strength of it, unless he has been guilty of fraud or like improper conduct, or unless having it in his power to obtain title, he does not do his best to do so; he is obliged to take and incur all reasonable trouble and expense in that behalf, but is not obliged to purchase any outstanding interest at an outlay of any substantial sum. [Day v. Singleton, [1899] 2 Ch. 320, referred to.]

Maitland v. Mathews, 23 D.L.R. 19, 8 A.L.R. 269, 8 W.W.R. 274, 31 W.L.R. 163.

(§ III A 3—62)—BREACH OF CONTRACT TO SELL LAND—OUTSTANDING TAX LIEN—LOSS OF BARGAIN.

Where the vendor of land held under a contract of purchase from another at a tax sale allowed the tax title to lapse by failure to register the transfer within two months from the order confirming the tax sale, as required by the Land Titles Act. Alta., 1906, ch. 24, sec. 60, the right of the purchaser will not, in the absence of any stipulation to the contrary, extend to the recovery of substantial damages for the loss of the bargain, but will be limited to the recovery of the amount he has paid and interest and his costs and expenses in connection with the agreement. [Bain v. Fothergill, L.R. 7 H.L. 158, applied; Day v. Singleton, [1899] 2 Ch. 320, considered.]

Maitland v. Mathews, 23 D.L.R. 19, 8 A.L.R. 269, 8 W.W.R. 274, 31 W.L.R. 163.

(§ III A 3—62)—BREACH OF CONTRACT TO CONVEY—LOSS OF PROFITS.

The inability of a vendor to perform a contract for the sale of land because of the objections by one who conveyed the land as security for a debt entitles the purchaser to a refund of the money paid thereon, but not to any loss of profit by reason of the increase of value since the purchase. [McNiven v. Pigott, 22 D.L.R. 141, 147, 33 O.L.R. 78, 335, referred to.]

Hetherington v. Sinclair, 23 D.L.R. 630, 34 O.L.R. 61, 8 O.W.N. 383.

(§ III A 3—62)—BREACH OF CONTRACT TO CONVEY—OPTION BY HUSBAND ON WIFE'S PROPERTY—NOMINAL DAMAGES.

An option to purchase inserted in a lease executed by the husband on land owned by the wife, which cannot be carried out because of the wife's disapproval, entitles the lessee, who had knowledge of the wife's ownership, to nominal damages as against the husband only, and not the ordinary damages such as the expense incurred in searching the title or for loss of profit on a resale.

McCune v. Good, 23 D.L.R. 662, 34 O.L.R. 51, 8 O.W.N. 367.

(§ III A 3—62)—AGREEMENT FOR SALE OF LAND—OPTION—ACCEPTANCE—FAILURE OF VENDORS TO CONVEY.

Bennett v. Stodgell, 9 O.W.N. 174.

(§ III A 3—63)—BREACH OF COVENANT FOR RAILWAY STATION—COSTS OF SURVEY—LOSS OF PROFITS.

In an action for breach of covenant to establish a railway station in furtherance of an arrangement to subdivide lands as a townsite, a claim for half the costs of the survey and the increased amount of taxes paid as a result of the subdivision, also the loss of profit on a sale of lots therein as ascertained from the evidence, may be properly allowed in the assessment of damages.

Norquay v. G.T.P. Town & Dev. Co., 25 D.L.R. 59, 9 W.W.R. 347, 32 W.L.R. 756.

(§ III A 3—63)—BREACH OF IMPLIED COVENANT TO HEAT APARTMENTS.

A breach of covenant by a lessor to furnish adequate heat will entitle the lessee to recover damages in respect of the loss of time of men employed by him and the extra cost of attempting to heat the leased premises, and also damages for the general loss and inconvenience resulting from the breach.

Brymer v. Thompson, 23 D.L.R. 840, 34 O.L.R. 194, 8 O.W.N. 527.

[Affirmed in 25 D.L.R. 831, 34 O.L.R. 543.]

(§ III A 4—71)—SALE OF GOODS—MANUFACTURED ARTICLES—REFUSAL OF PURCHASER TO ACCEPT—ABSENCE OF GENERAL MARKET—PROFITS.

Brunswick Balke Collender Co. v. Falsetto, 25 D.L.R. 848, 34 O.L.R. 386, 9 O.W.N. 27.

(§ III A 4—75)—SALE OF FUTURE CROP—FAILURE TO ACCEPT.

A potato factor contracted to purchase for himself or his nominees the whole of a farmer's crop at a certain price (i.e., September prices), the future yield being estimated by the farmer at six hundred tons, more or less. The factor disposed of eleven hundred and forty tons out of an actual crop slightly in excess of twelve hundred tons, and then notified the farmer to cease shipping potatoes. Held, that (in consideration of the fact that the farmer might have disposed of the potatoes left on his

hands at a certain price and was bound to take advantage of any reasonable opportunity to minimize his loss) the proper measure of damages was the contract price less the amount that would have been received upon the acceptance of such offer, no evidence having been adduced to shew the market price at the date of the breach of contract.

Hammond v. Daykin & Jackson, 8 W.W.R. 512.

(§ III A 4—80)—BREACH OF WARRANTY—FITNESS FOR BREEDING.

The buyer suing for damages for breach of warranty that a stallion was fit for breeding purposes may recover as damages a sum made up of the price and interest, transportation expenses, and cost of keeping the horse a reasonable time until he could be sold, where there had been an offer to return him, but less the actual value of the horse. [*Chesterman v. Lamb*, 2 A. & E. 129; *Ellis v. Chinnock*, 7 Car. & P. 1690, referred to.]

Wood v. Anderson, 21 D.L.R. 247, 33 O.L.R. 143, 7 O.W.N. 731.

(§ III A 4—80)—BREACH OF WARRANTY—TONNAGE CAPACITY.

In an action for breach of warranty as to the tonnage capacity of a motor truck, the true measure of damages is not the difference in price between the truck sold and the standard of one it warranted to be, but the difference between the price paid for and its market value at the date of sale, together with the costs of repairs incurred in its consequent overloading under the mistaken belief as to its true capacity.

Victoria Saanich Co. v. Wood Motor Co., Ltd., 23 D.L.R. 79, 8 W.W.R. 1124, 31 W.L.R. 853.

(§ III A 4—80)—BREACH OF IMPLIED CONDITION OR WARRANTY—PLEADING—JUDGMENT—SCOPE OF REFERENCE—MASTER'S REPORT—APPEAL.

Maple Leaf Portland Cement Co. v. Owen Sound Iron Works Co., 9 O.W.N. 269.

(§ III A 4—83)—SALE OF MACHINERY—DEFECTS—REPAIRS.

Special damages resulting because of the buyer of machinery not being able to do certain work therewith because of defects requiring repair are not recoverable where the seller neither expressly nor impliedly contracted to be bound for such consequences and they did not naturally flow from the agreement of sale.

Chapin v. Matthews, 22 D.L.R. 95.
[Reversed in 24 D.L.R. 457.]

(§ III A 4—83)—BREACH OF WARRANTY—DEFECTIVE TRACTION ENGINE—COSTS—REPAIRS.

Amounts paid to experts in an endeavour to make a traction engine work properly and for extra oil and gasoline consumed by the engine above the normal consumption, as well as the cost of securing the ploughing to be done by some one else owing to its defective working, are recoverable by way

of damages for a breach of warranty of the fitness of the engine. [*Walton v. Ferguson*, 19 D.L.R. 816, followed; *Hadley v. Baxendale*, 23 L.J. Ex. 179, applied.]

Chapin v. Matthews, 24 D.L.R. 457, 9 W.W.R. 301, 32 W.L.R. 663, reversing 22 D.L.R. 95.

(§ III A 5—85)—CONTRACTS—MUNICIPAL CORPORATION—EMPLOYMENT OF SERVANT—DAMAGES FOR BREACH.

Cyr v. Town of Fort Frances, 9 O.W.N. 7.

(§ III A 5—87)—WRONGFUL DISMISSAL—FAILURE TO SEEK OTHER EMPLOYMENT—MITIGATION.

The failure of a servant to seek other employment may be set up in mitigation of damages against a claim for wages for the unexpired term. [*Andrews v. Pac. Coast Coal Mines*, 15 B.C.R. 56, applied.]

Pratt v. Idsardi, 23 D.L.R. 257, 31 W.L.R. 541.

(§ III A 7—97)—DELAY TO COMPLETE CONTRACT FOR MACHINERY—PENALTY OR LIQUIDATED DAMAGES.

When a contract of lease on hire of work contains the following clause: "I will deliver the machinery completed on your premises on or before the first of May, 1911, for the sum of \$33,000. If I make late delivery of all on any one of the distinct and separate machines I have undertaken to deliver on May 1, 1911, I agree to allow you to deduct when paying me from the purchase price as stipulated in the contract \$25 for each day's delay in the delivery of each of the separate machines, and this a liquidated damage and not by way of forfeiture," and delay takes place in the delivery of the works, the sum mentioned in the penal clause must be considered as liquidated damages and the defendant opposing that clause need not allege nor prove any damage. The defendant was not obliged to allege that the delay was due to the fault of the plaintiff. When the defendant opposed this clause to the action for the balance of the price of the works done by deducting the liquidated damages from the price stipulated, he did not plead compensation, but was only executing the contract.

Canadian General Electric Co. v. Canadian Rubber Co., 47 Que. S.C. 24.

D. IN RESPECT TO FREIGHT OR BAGGAGE.

(§ III D—129)—VALUE OF GOODS DAMAGED BY CARRIER—REFUND OF FREIGHT CHARGES.

When a carrier is condemned to pay to a consignee the full value of the goods damaged, it should also reimburse him for the amount of the freight that he paid upon the goods.

Dechêne v. C.P.R. Co., 47 Que. S.C. 431.

F. FRAUD.

(§ III F—145)—ACTION FOR DECEIT.

In an action for deceit on the sale of lands, a proper measure of damages is the amount

paid over by the plaintiff in consequence of his dealings with the defendant with interest and a reasonable sum for time, labour and wages expended by the plaintiff on the property which was practically worthless for the purpose for which it was sold.

Anderson v. Fuller, 22 D.L.R. 66.

(§ III F-145)—DECEIT—MEASURE OF DAMAGES—PROFITS—SERVICES—REFERENCE—APPEAL—COSTS.

Peppiatt v. Reeder, 9 O.W.N. 121, 263.

G. ASSAULT; FALSE IMPRISONMENT; MALICIOUS PROSECUTION; ABUSE OF PROCESS.

(§ III G-152)—MALICIOUS PROSECUTION—RIVAL CANDIDATES AT ELECTION.

An award of \$1,200 damages in an action for malicious prosecution of a candidate for election to the Legislature, on a charge of forgery, prosecuted by a rival candidate, is not excessive.

Rudyk v. Shandro, 24 D.L.R. 330, 9 A.L.R. 87, 8 W.W.R. 880, affirming 18 D.L.R. 641.

I. PERSONAL INJURIES; DEATH.

(§ III I 1-165) — IMPAIRING HEALTH — CATARRH—PROXIMATE CAUSE.

Where a plaintiff in an action for damages alleges that, as a result of the accident, his health had been impaired and that he had lost the sense of smell, it is proper and legal for him to prove that he had since the accident, and was still, suffering from catarrh, and that such impairment was due to the accident.

Orr v. Montreal Tramways Co., 48 Que. S.C. 17.

(§ III I 1-165) — NEGLIGENCE — PERSONAL INJURY TO PLAINTIFF.

Poizner v. Cottier, 8 O.W.N. 51.

(§ III I 3-180)—ACTION UNDER LORD CAMPBELL'S ACT—EFFECT OF INSURANCE.

In assessing damages the moneys paid to the suppliant under the sick allowance insurance should be taken into consideration, but the moneys paid under the provident fund should not be so considered in view of sec. 20 of 6-7 Edw. VII. ch. 22. In general, in considering the question as to whether insurance money should be taken in account in assessing compensation in cases of accident, a distinction must be made between the case where a party himself is suing for injury either to his person or his property, and the case under Lord Campbell's Act and art. 1056 C.C.P.Q., where the action is for the pecuniary loss caused by the death to the survivors. In the former case he has two distinct causes of action, one on contract with the insurance company and the other in tort against the wrongdoer. In the latter case it is the pecuniary loss caused by the death which forms the basis of the action and the measure of damages, and in this case alone the insurance money is to be taken into consideration.

Saundon v. The King, 15 Can. Ex. 305.

(§ III I 3-187)—ACTION BY PARENTS FOR DEATH OF CHILD—LOSS OF SERVICES—EFFECT OF INSURANCE.

In an action for damages by a father under art. 1054 C.C. for the death of his son, when it is proved that the son, 20 years of age, lived with his father, and was to live there for at least five years further, and that he earned \$600, which he gave to his father to assist him, the Court fixed the damages suffered by the father at \$1,200. A defendant sued under art. 1056 C.C. cannot have the damages awarded by the Court reduced by the amount of an insurance policy received by the plaintiff without special allegation in his defence.

Lafamme v. Levis Ferry, 47 Que. S.C. 291.

(§ III I 4-192)—INJURY TO RAILWAY ENGINEER—PERMANENT INCAPACITY — PAIN AND SUFFERING.

An award of \$27,000 to a railway engineer aged 32 and earning a yearly income of \$2,122 for personal injuries incapacitating him for life, such award being based on the pain and suffering and the pecuniary loss for the duration of life, was held by a divided Court to be a fair compensation under the circumstances. [*Phillips v. L. & S.W.R. Co.*, 5 Q.B.D. 78, 5 C.P.D. 280; *Johnston v. Great West. R. Co.*, [1904] 2 K.B. 250; *Rowley v. L. & N.W.R. Co.*, L.R. 8 Ex. Ch. 221, applied.]

Jackson v. C.P.R. Co., 24 D.L.R. 380, 8 W.W.R. 1043, 31 W.L.R. 726.

[Affirmed by Canada Supreme Court, 9 W.W.R. 649.]

(§ III I 4-192)—PERMANENT INCAPACITY — ESTIMATION ON BASIS OF INVESTMENT.

The possibilities of a permanent investment producing 8% per annum does not form a proper basis of estimating the value of a verdict for damages for permanent incapacitating injuries simply because that may be a fair rate of interest at the present moment. (Per *Idington, J.*) Physical and mental pain may be taken into consideration in estimating such damages. (Per *Idington, J.*)

Jackson v. C.P.R. Co., 9 W.W.R. 649, affirming 24 D.L.R. 380, 8 W.W.R. 1043, 31 W.L.R. 726, 8 A.L.R. 137.

(§ III I 4-193)—IMPAIRMENT OF SIGHT.

An award of \$5,200 damages in favour of a man 29 years old for the loss of an eye and the impairment of sight in the other, caused by explosion in a mine, while liberal, is not excessive.

Doyle v. Foley-O'Brien Ltd., 22 D.L.R. 872, 34 O.L.R. 42, 8 O.W.N. 362.

[Affirmed by Canada Supreme Court, December 29, 1915.]

(§ III I 4-196)—DEATH OF CHILD CAUSED BY FLOODING CELLAR—REMOTENESS.

Even where a city may be responsible for the flooding of a cellar, it could only be condemned to pay the damages which are the direct and necessary consequence of the break in the pipe, but it cannot be held

liable for the remote and indirect damages such as those resulting in the death of the plaintiff's child caused by the neglect of defendants to close the opening of their cellar.

Darragh v. Coté, 48 Que. S.C. 478.

J. INJURY; TAKING OR DETENTION OF PERSONAL PROPERTY.

(§ III J—201)—INJURY TO MOTOR CAR — QUANTUM OF DAMAGES — EVIDENCE — ESTIMATE OF COST OF REPAIRS—ASSESSMENT BY JURY—APPEAL—OPTION GIVEN TO DEFENDANT TO TAKE PLAINTIFF'S INJURED CAR — PAYMENT OF INCREASED AMOUNT—COSTS.

Laird v. Taxicabs Limited, 7 O.W.N. 736.

(§ III J—203)—CONVERSION — RETURN OF GOODS.

It is none the less a conversion of goods that they were taken by mistake, but their return, on discovery of the mistake, will minimize the damages to be awarded, if the owner is placed in such a position that he can use the goods.

Campbell v. McMillan, 22 D.L.R. 608.

(§ III J—203)—CONVERSION — REMOVAL OF BUILDING FROM MINING CLAIM—TITLE TO BUILDINGS—BILL OF SALE—"PLANT"—LIABILITY OF WRONGDOER FOR ACTS OF SERVANTS—ASSESSMENT OF DAMAGES—COSTS.

Silverman v. White, 9 O.W.N. 110.

K. INJURY TO REAL PROPERTY; NUISANCE.

(§ III K 2—216)—CUTTING TIMBER.

In assessing damages against a lumber company for entering and cutting timber on lands of another company there may be allowed, in addition to the stumpage valuation, damages for the occupation of the land while the lumbering operations were going on, the consequent construction of roads through the woods and the felling of trees for that purpose, and damages because of the trees having been young and unmatured, which would have been of more value to the landowner had they been left standing.

Dominion Lumber Co. v. Halifax Power Co., 23 D.L.R. 187, 48 N.S.R. 364.

[Appeal to Canada Supreme Court dismissed, October 12, 1915.]

(§ III K 3—222)—INUNDATION OF LANDS — VALUE—PERMANENCY OF LOSS.

In an action claiming damages for inundation of land, the Court cannot award the total value of the land inundated if this inundation is not permanent. It should, if the evidence justifies it, admit only the loss suffered from being deprived of the enjoyment of the property. In default of such evidence, the Court of Review will remit the cause to the Superior Court to allow the parties to complete the proof.

Fortier v. Can. L. & P. Co., 48 Que. S.C. 483.

(§ III K 4—225)—NUISANCE — INDUSTRIAL WORKS—INTERFERING WITH PHYSICAL COMFORT.

An action for damages in respect of the nuisance caused to a neighbouring owner by reason of smoke, dust and noise from industrial works, may be maintained if the plaintiff has suffered damages different in character and distinct from any injury, inconvenience, or annoyance occasioned to the public generally, and the nuisance is of such a character as to interfere with the ordinary physical comfort of human existence. [Appleby v. Erie Tobacco Co., 22 O.L.R. 533; Dewar v. City and Suburban Racecourse Co., [1899] 1 I.R. 345, referred to.]

Taylor v. Mullen Coal Co., 21 D.L.R. 841, 7 O.W.N. 764, 8 O.W.N. 445.

L. CONDEMNATION OR DEPRECIATION IN VALUE BY EMINENT DOMAIN; EXPROPRIATION.

(§ III L 1—230)—ARBITRATION — APPLICATION FOR—OWNER OF LAND — TEMPORARY ROAD THROUGH LAND — MUNICIPALITIES — RIGHTS OF—RURAL MUNICIPALITIES ACT (ALTA.).

Blomfield v. Mun. of Starland, 21 D.L.R. 859, 31 W.L.R. 573.

[Affirmed in 25 D.L.R. 43, 9 W.W.R. 552, 32 W.L.R. 905.]

(§ III L 1—230) — RAILWAY — CONSTRUCTION OF SUBWAY—INJURY TO PROPERTY—ACTION MAINTAINABLE.

Clavir v. C.N.R. Co., 22 D.L.R. 913, 7 O.W.N. 695.

(§ III L 2—240) — MEASURE OF COMPENSATION—VALUATION.

The principle upon which compensation and damages should be awarded upon an expropriation of land is the market value, including the potential value of the land taken, at the time of the filing of the plans, without taking into consideration the values and elements of compensation incident to the property at the time of the award.

St. John & Quebec R. Co. v. Fraser Ltd., 24 D.L.R. 339, 43 N.B.R. 388.

(§ III L 2—240)—ESTIMATION OF VALUE — RECONVEYANCE OF PART TAKEN.

Though an owner cannot be compelled to take back land after it has been found unsuitable for the purposes for which it was taken by a railway company, the fact that, by accepting a reconveyance, the value of the remaining land would be materially increased, should be taken into consideration when awarding compensation therefor.

Re Hannah & Campbellford L.O. & W.R. Co., 25 D.L.R. 234, 34 O.L.R. 615, 9 O.W.N. 179.

(§ III L 2—240)—COMPENSATION—VALUES.

In expropriation proceedings the arbitrators should take into consideration any special advantages, such as position or location, and should award the value of the land with all its present or future advantages,

but must consider the actual and not any uncertain or hypothetical values.

Canadian North. Ont. R. Co. v. Perrault, 24 D.L.R. 295, 24 Que. K.B. 78.

(§ III L 2—240)—SPECIAL VALUES.

The law of Canada, in matter of expropriation, as regards the principles upon which compensation for the land taken is to be awarded, is the same as the law of England. The indemnity to be paid for land is the value to the owner as it existed at the date of the taking, not the value to the taker. The value to the owner consists of all advantages which the land possesses, present or future, but it is the present value, along with such advantages that fall to be determined. When there is a special value over the bare value of the ground, consisting in a prospective value on account of certain undertaking, the value is not a proportional part of the assessed value of the whole undertaking, but is merely the price enhanced above the bare value of the ground which possible intending undertakers would give. The price must be tested by the imaginary market which would have ruled had the land been exposed for sale before any undertakers had secured the powers, or acquired the other subjects, which made the undertaking, as a whole, a realized possibility.

Lachine Jacques Cartier, etc., R. Co. v. Mitcheson, 47 Que. S.C. 3.

(§ III L 2—240)—ARBITRATION — BASIS OF AWARD.

In an expropriation under the Railway Act of Canada, the arbitrators, in giving their award, may grant a total sum for the value of the land and for all damages without giving the grounds upon which they base it. In giving their award, the arbitrators should consider the value of the land expropriated not at the time of the hearing, but at the date of the deposit of the plan in the Registry Office and of the offer by the expropriating party. Nevertheless, at the hearing before the arbitrators, it is permissible to prove the value of the immovable at the time of the enquête by witnesses, but this value can only be considered as a circumstance aiding to establish the value of the property at the time of the deposit of the plan and of the offer.

Lachine, Jacques Cartier, etc., R. Co. v. Beaulieu, 47 Que. S.C. 208.

(§ III L 2—240) — MUNICIPAL CORPORATIONS — EXPROPRIATION OF LAND—COMPENSATION—ARBITRATION AND AWARD—VALUE OF LAND—PROSPECTIVE USE—DEDUCTIONS FROM VALUE—APPEAL.

Re Casci and Toronto, 8 O.W.N. 588.

(§ III L 2—241)—ESTIMATION OF VALUE — TIME.

The intention of the Railway Act, Alta., 1907, ch. 8, is to fix the last convenient date as that in reference to which the value of property expropriated shall be determined; if there is an agreement of sale the date of

that agreement is taken or if there is a Judge's order appointing an arbitrator, the date of that order is taken, but if no such order is required by reason of the parties agreeing on the third arbitrator, the value is fixed as of the date of the service of the notice to treat under sec. 101.

Can. North. West. R. Co. v. Moore, 23 D.L.R. 646, 8 A.L.R. 379, 7 W.W.R. 1327, 30 W.L.R. 676.

(§ III L 2—244)—DISUSED SHIPYARD—BASIS OF COMPENSATION.

Where an old shipyard, not used as such at the time of expropriation, has been taken for the purposes of a public work, compensation should not be assessed on the basis of separating the various factors or component parts of the shipyard and estimating their several values, but the yard must be regarded as a whole and its market value as such assessed as of the time of the expropriation. [See the King v. Kendall, 14 Can. Ex. 71, and the King v. New Brunswick R. Co., 14 Can. Ex. 491.]

The King v. Loggie, 15 Can. Ex. 80.

(§ III L 2—250)—LAND BORDERING RIVER — SPECIAL VALUE—ADAPTIBILITY FOR ICE BUSINESS.

The special value attributable to land bordering a river on account of its special adaptibility for the ice business carried on by the owners, as estimated from the extra cost of harvesting the ice elsewhere, may be allowed in fixing the amount of compensation for the expropriation of such lands for railway purposes; but the cost of sawdust used for covering the ice, the owners still carrying on the business on the same premises, must be disallowed. [Pastoral Finance Assn. v. The Minister, [1914] A.C. 1083, applied.]

Re Schooley and Lake Erie and North. R. Co., 25 D.L.R. 537, 34 O.L.R. 328, 8 O.W.N. 589.

(§ III L 2—250)—MARKET AND INTRINSIC VALUES.

Under sec. 3 of the Expropriation Act, R.S. Can., 1906, ch. 143, when land is expropriated for the purposes of the Government, the owner is entitled to have it assessed as of the date of expropriation, at its market value, taking into consideration the best uses to which it can be put, and not on the basis of its intrinsic value.

The King v. Estate of John Manuel, 25 D.L.R. 626, 15 Can. Ex. 381.

(§ III L 3—255)—RAILWAYS — EXPROPRIATION OF LAND — COMPENSATION—AWARD —VALUE OF LAND TAKEN AND INJURIOUS AFFECTIO OF LAND NOT TAKEN—APPEAL —INCREASE IN AMOUNT AWARDED.

Re Ruddy and Toronto Eastern R. Co., 7 O.W.N. 796.

(§ III L 4—260) — ABUTTING OWNERS — RIGHTS IN FORESHORE.

The contingency that owners of lots abutting a river might acquire from the

municipality additional ground in the foreshore to extend the depth of those lots in lieu of what had been taken from them in front in a street widening operation, or the owners' chances of getting leave from the Crown to extend some works or pier-head over the foreshore not belonging to the Crown, are too remote and speculative as elements of compensation for the taking of the foreshore for reclamation purposes, and an award based on such valuation is invalid and will be set aside. [The Cedars Rapids, etc., Co. v. Lacoste, 16 D.L.R. 168, [1914] A.C. 569, referred to. Re False Creek Reclamation Act, 22 D.L.R. 103, affirmed.]

Re False Creek Reclamation Act, 22 D.L.R. 117, 113 L.T. 795, 8 W.W.R. 1191, 31 W.L.R. 678.

(§ III L 4—267) — RECLAMATION OF FORESHORE—RIPARIAN RIGHTS OF ACCESS.

The rights of riparian owners of going over the foreshore as a means of access to the sea are elements of valuation in awarding compensation for the taking of the foreshore for reclamation purposes. [Duke of Buccleuch, L.R. 5 H.L. 418, referred to. Re False Creek Reclamation Act, 22 D.L.R. 103, affirmed.]

Re False Creek Reclamation Act, 22 D.L.R. 117, 8 W.W.R. 1191, 31 W.L.R. 678, 113 L.T. 795.

(§ III L 6—280)—PUBLIC PARKS—PROBABLE ADVANTAGES.

What is likely to be the value of lands if certain local improvements are made, which may or may not follow the acquisition of such lands for park purposes, if in their existing conditions the lands are practically unsalable, is not to be regarded in their valuation upon an expropriation of such lands for public parks.

Re Hislop & Stratford Park Board, 23 D.L.R. 753, 34 O.L.R. 97, 8 O.W.N. 425.

(§ III L 6—280)—SETTING OFF OF INCREASED VALUE.

Upon expropriation by a railway company, notwithstanding the vagueness of the words "inconvenience, loss, or damage" in sec. 57 of the Railway Act, the general rule of damages covering the part taken and the injury to the remaining land is that the owner is entitled to the difference between the market value of the whole lot or tract before the taking and the market value of what remains to him after such taking. [James v. Ont. & Que. R. Co., 12 O.R. 624, 630, referred to.] The effect of the section in question is to direct a setting off of the increased value to the remainder of the land not taken by the railway company as against damages that may be allowed through severance.

Pacific Great East. R. Co. v. Larsen, 8 W.W.R. 1.

P. LOSS OF PROFITS.

(§ III P 1—333) — DEFECTIVE INSTALLATION OF BINDER—LOSS OF CROP.

The destruction of a crop resulting from

the delay in harvesting it because of physical disability occasioned by an improper setting up of a binder is too remote an element of damage to be considered in an action against the seller of such machine. [Walton v. Ferguson, 19 D.L.R. 816, followed.]

Price v. International Harvester Co., 23 D.L.R. 286, 8 W.W.R. 712, 31 W.L.R. 216.

(§ III P 2—340)—OUTPUT OF CEMENT PREVENTED BY DELAY OF BUILDING CONTRACT.

The loss of profit on the output of cement, occasioned by a delay in the performance of a contract for the erection of the plant at the appointed time, is damage naturally resulting from the breach of contract, and therefore recoverable as such. [Leonard v. Kræmer, 7 D.L.R. 244, 4 A.L.R. 152, 11 D.L.R. 491, 48 Can. S.C.R. 518, Chaplin v. Hicks, [1911] 2 K.B. 786, applied.]

Canada Foundry Co. v. Edmonton Portland Cement Co., 25 D.L.R. 683, 9 W.W.R. 395, 32 W.L.R. 684.

(§ III P 2—342)—PROFITS OF LAND OPTIONS—REMOTENESS.

The holder of an option to land has no recourse against a purchaser for loss of his profits, such damages being too remote and not being those that the parties could have foreseen.

Rivet v. Anctil, 47 Que. S.C. 240.

S. MITIGATION; REDUCTION.

(§ III S—355) — EXCESSIVENESS — REDUCTION ON APPEAL.

Where the amount of damages awarded appears excessive the Court of Appeal will reduce the amount even where there is no cross-appeal.

Chiniquy v. Begin, 24 D.L.R. 687, 24 Que. K.B. 294, reversing 20 D.L.R. 347 and varying 7 D.L.R. 65.

IV. Assessment; double or treble damages.

V. Division of damage.

(See previous Annual Digests.)

DAYS OF GRACE.

See Moratorium.

DEATH.

I. IN GENERAL.

II. RIGHT OF ACTION FOR CAUSING.

A. In general.

B. Who may maintain and for whom.

III. WHO LIABLE FOR CAUSING.

IV. DEFENCES.

V. AUTHORITY TO COMPROMISE CLAIM FOR.

VI. EFFECT OF.

Presumption of, see Evidence.

Admissibility of declarations of deceased person, see Evidence.

Of insured, proof of, see Insurance, VI.

Actionable negligence causing death generally, see Negligence.

Cause of, see Proximate Causes.
Measure of damages, see Damages.

Annotation.

Parent's claim under fatal accidents law; Lord Campbell's Act: 15 D.L.R. 689.

Effect of war on recovery by alien enemy beneficiaries or dependants: 23 D.L.R. 375, 380.

I. In general.

(See previous Annual Digests.)

II. Right of action for causing.

A. IN GENERAL.

(§ II A-5)—PLACE WHERE ACTIONABLE.

An action will lie in Quebec by the dependants of a person killed in Ontario, although in Ontario no action would lie, unless the deceased would have had a right of action had he survived; however, where he had barred such action by the contract he had signed; in Quebec, the right of action is not subject to such condition, but the wrongful act must be of a class actionable in Ontario.

Canadian Pacific R. Co. v. Parent, 21 D.L.R. 681, 51 Can. S.C.R. 234, 19 Can. Ry. Cas. 1.

(§ II A-6) — DERRICK — NEGLIGENCE OF OWNER—NEGLIGENCE OF HIRER — CONTRIBUTORY—DAMAGES.

Dube v. Algoma Steel Corporation Ltd., 21 D.L.R. 857, 8 O.W.N. 513.

(§ II A-6)—DEATH WHILE OPERATING ELEVATOR—RIGHT TO WORKMEN'S COMPENSATION—OFFICE BUILDING—"FACTORY."

The representative of an elevator operator who was killed in the course of his employment is entitled to recover compensation under the Workmen's Compensation Act, Sask., although the building in which the electric elevator was operated was not used for manufacturing purposes, but for offices and apartments, such building being within the statutory definition given in that Act to the word "factory."

Western Trust Co. v. Duncan, 21 D.L.R. 461, 8 S.L.R. 7, 8 W.W.R. 334, 30 W.L.R. 921.

III. Who liable for causing.

IV. Defences.

(See previous Annual Digests.)

V. Authority to compromise claim for.

(§ V-30)—DEATH ON GOVERNMENT RAILWAY—RELEASE TO BENEFIT ASSOCIATION—LIABILITY OF CROWN.

The suppliant, having been injured on a government railway, was paid sick allowances by an insurance association for nearly 26 weeks, and when the sick and accident pay-rolls were presented to him for signature, and when he signed them, there was in small print at the head of the column to which he affixed his signature as a receipt for such moneys, the following: "In consideration of the receipt by us of the sums set opposite our respective names, we do hereby release and discharge the Inter-

colonial Railway, etc., from all claims for damages, indemnity or other forms of compensation on account of said disablement." Held, that, as no notice was given to the suppliant of such condition, and as his attention was never called to it, and that he signed the receipt without being aware of the same, it could not now be set up as a bar to his recovering. Under a by-law (113) of such association, by the payment of \$10,000 annually by the Railway Department to the association, it was provided that the Railway Department "shall be relieved of all claims for compensation for injuring or death of any member." But in the case of death or total disablement the Crown did not, under the rules of the association, contribute to the amount paid in respect thereof, such fund being made up by special assessment among the members. Held, that, as the Crown did not contribute to the indemnity in the case of death or total disablement, it could not avail itself of the immunity provided by the by-law in question.

Saindon v. The King, 15 Can. Ex. 305.

(§ V-30)—DEATH ON GOVERNMENT RAILWAY—RELEASE BY WIDOW—ERROR—RIGHT TO INDEPENDENT ACTION.

Suppliant's husband was killed in an accident on the Intercolonial Railway. Suppliant gave a receipt for the insurance money payable on his death to the Intercolonial and Prince Edward Island Railway Employees' Relief and Insurance Association and in full satisfaction and discharge of all her claims against the said association and against His Majesty the King, arising out of the death of her husband. Her attention was not called to this discharge embodied in the receipt, and the letter transmitting the form of receipt for signature did not mention it. Moreover, it was in the English language, which she did not understand and could not read when signing it. Held, that suppliant could not be taken to have assented to such condition; and it could not be set up as a bar to her recovery. Held, that, applying Miller v. G.T.R. Co., [1906] A.C. 187, that suppliant's right of action in this case under art. 1056 C.C.P.Q. was a personal one and independent from that of her husband; and that any immunity from damages or condition that might have been available as a defence to an action by her husband because of his being a member of an insurance and provident society, was no bar to the suppliant's action after his death.

Hudon v. The King, 15 Can. Ex. 320.

(§ V-30)—BENEFICIAL ACTION TO WIDOW AND CHILDREN—POWER OF HUSBAND TO RELEASE CLAIM.

Art. 1056, C.C., gives to the widow and children a direct and independent action, and not merely a derivative one, and consequently a release signed by the husband or father would not stand in the way of or destroy their claim in damages.

Canadian Pacific R. Co. v. Parent, 24 Que. K.B. 193.

VI. Effect of.

(§ VI—35) — DEATH PENDING ACTION—RIGHT OF HEIRS TO CONTINUE.

Where a person has been injured and has commenced an action for damages, but dies pending the action, his claim becomes an asset, transmissible by succession, and his heirs have a right to continue the action.

Montreal Street R. Co. v. Chevandier, 24 D.L.R. 349, 24 Que. K.B. 48.

DEBT.

Attachment of, see Garnishment; Attachment.

DEBTOR AND CREDITOR.

Arrest for debt, see Arrest.

Insolvency of debtor, see Assignment for Creditors; Banks, IV; Corporations and Companies, VI; Insolvency; Partnership.

As to remedies of creditors, see Attachment; Fraudulent Conveyances; Garnishment.

Creditors of decedent, see Executors and Administrators.

Rights of creditors as affected by marital relations of debtor, see Husband and Wife.

Joint creditors and debtors, see Joint Creditors and Debtors.

Lien of creditor, see Liens; Mechanics' Liens.

Protection of creditors under recording acts, see Records and Registry Laws.

DECEIT.

See Fraud and Deceit.

DECLARATIONS.

Admissibility in evidence, see Evidence, X.

DECREE.

See Judgment; Foreclosure decree, see Mortgage; Vendor and Purchaser.

DEDICATION.

I. MODE AND EFFECT.

A. In general.

B. By map or plat.

C. Who may dedicate.

II. ACCEPTANCE.

III. REVOCATION; ABANDONMENT; REVERTER.

Establishment of highways by, see Highways.

I. Mode and effect.

A. IN GENERAL.

(§ I A—3) — ANIMUS DEDICANDI — PUBLIC USER.

In order to constitute a valid dedication to the public of a highway by the owner of the soil there must be an *animus dedicandi* of which the use by the public is merely some evidence; public user does not create a presumption of grant or dedication. [Mann v. Brodie, 10 A.C. 378, 386, applied; Rowland v. Edmonton, 20 D.L.R. 36, reversed.]

Rowland v. City of Edmonton, 21 D.L.R. 33, 50 Can. S.C.R. 520, 8 W.W.R. 20, 31 W.L.R. 33.

(§ I A—3) — PUBLIC STREET — INTENTION OF OWNER.

There is no donation of streets to the public, unless it is expressly formulated or unless certain actions indicate the intention of the owner to destine them to the use of the public.

Chars Urbains v. Commissaires du Havre, 24 Que. K.B. 503.

B. BY MAP OR PLAT.

(§ I B—12) — SELLING LOTS WITH RESPECT TO — SUBDIVISIONS.

The vendor of six acres of land sold en bloc has no right afterwards to register a subdivision of the land with its incidental concession of lanes and streets through it against the will of the purchaser, although the contract contained a clause "plan to be similar to City View addition adjoining."

Magrath-Holgate v. Countryman, 22 D.L.R. 684.

C. WHO MAY DEDICATE.

(§ I C—15) — MUNICIPALITY — PRESUMPTIONS—HIGHWAY.

The spending of a sum of money by the government and the municipality on the plaintiff's land by building a highway wider than the authorized or reserved width and so encroaching on the plaintiff's land does not create a presumption *juris et de jure* in favour of dedication, even if acquiesced in by the owner. [Rowland v. Edmonton, 20 D.L.R. 36, reversed.]

Rowland v. City of Edmonton, 21 D.L.R. 33, 50 Can. S.C.R. 520, 8 W.W.R. 20, 31 W.L.R. 33.

II. Acceptance.

III. Revocation; abandonment; reverter.

(See previous Annual Digests.)

DEEDS.

I. FORM AND REQUISITES.

A. In general; execution.

B. Delivery.

II. CONSTRUCTION; EFFECT; VALIDITY.

A. In general; construction.

B. Description of parties.

C. Description of property conveyed.

D. What property passes.

E. Estate or interest created.

F. Revocation; destruction, etc.

G. Failure of consideration.

Of trusts, see Assignment for Creditors; Mortgage; Trusts.

Boundaries under provisions of, see Boundaries.

As to covenants or conditions in, see Covenants and Conditions.

Parol evidence as to, see Evidence.

Fraud in securing, see Fraud and Deceit; Vendor and Purchaser; Land Titles.

Between husband and wife, see Husband and Wife.

Record of, see Records and Registry Laws; Land Titles.

Tax deeds, see Taxes, III.

Annotation.

Construction; meaning of "half" of a lot: 2 D.L.R. 143.

I. Form and requisites.

A. IN GENERAL; EXECUTION.

(§ I A—1) — ACKNOWLEDGMENT — NOTARY OFFICER OF PURCHASING COMPANY.

The execution of a deed before a notary who at the time of its execution is the president of the company assuming to purchase the lands, renders the deed invalid as an authentic conveyance. [Bédard v. Phoenix Land, etc., Co., 8 D.L.R. 686, 43 Que. S.C. 50, affirmed.]

Prevost v. Bédard, 24 D.L.R. 153, 51 Can. S.C.R. 149.

[See also Prevost v. Bédard, 24 D.L.R. 862, 51 Can. S.C.R. 629.]

II. Construction; effect; validity.

A. IN GENERAL; CONSTRUCTION.

(§ II A—15) — COVENANT — "COMMONS" — RECREATION GROUNDS.

The ball grounds, the reservoir, and the picnic grounds of a summer resort, used for general recreation, are "commons" within the meaning of a covenant in a deed entitling the lot owners to free access to the "commons" of the park, and are appurtenances running with the land that cannot be encroached upon by subsequent purchasers or assigns of the vendors of the grounds.

Re Lorne Park, 22 D.L.R. 350, 33 O.L.R. 51, 7 O.W.N. 558.

(§ II A—15) — INSCRIPTION EN FAUX—DEED TO PROPERTY OF ANOTHER—RIGHTS OF THIRD PARTY IN GOOD FAITH.

A deed of sale or of exchange of an immovable which does not belong to the vendor is absolutely void. This nullity, as well as that which results from a deed of sale declared false and radically null, can be set up by third parties in good faith as affecting their rights. In an action for a decree of nullity of a deed of sale, it is not necessary to make a tender; such is only required in the demand to be restored to possession.

Villemaire v. Caron, 47 Que. S.C. 103.

(§ II A—15)—CONSTRUCTION OF TRUST DEED SETTLING SHARE OF BENEFICIARY UNDER WILL—EFFECT AS TO RESTRAINT UPON ANTICIPATION—JUDGMENT IN FORMER PROCEEDING — EFFECT OF — REASONS FOR JUDGMENT—MASTER'S REPORT NOT APPEALED AGAINST—BINDING EFFECT ON PARTIES—STAY OF JUDGMENT.

Re Hamilton, 9 O.W.N. 264.

B. DESCRIPTION OF PARTIES.

(§ II B—25)—NAME OF CORPORATION.

A corporation's name in a grant, even if there is a variance, will be sufficient if it is substantially correct and it is the corporation intended. [Bruce v. Cromar, 22 U.C.Q.B. 321; Hawkins v. Perth, 2 U.C.C.P. 72; Moore v. Bradley, 5 Man. L.R. 49, referred to.]

Pictou v. Town of New Glasgow, 23 D.L.R. 600, 48 N.S.R. 424.

C. DESCRIPTION OF PROPERTY CONVEYED.

(§ II C—30)—BOUNDARIES — ROAD RESERVATION.

Where the descriptions in the plaintiff's chain of deeds prior to the defendant's title from the common grantor clearly pointed to a road reservation 50 feet in width as a boundary, such may be shown to be the true boundary rather than another and intermediate road reserve not corresponding to same in width, although in one of the deeds in the plaintiff's chain of title the two road allowances were erroneously treated as identical, particularly where neither of them were in actual use as roads.

McDonald v. Gallagher, 21 D.L.R. 746, 48 N.S.R. 332.

D. WHAT PROPERTY PASSES.

(§ II D 1—36) — APPURTENANCES — RESERVATION OF BARN.

The sale of land with messuages and appurtenances transfers the ownership of buildings erected upon the land, which, being used in working it, are its appurtenances. Reservation by the vendor of part of a building, such as a barn, erected upon the land that he conveys "for his use of the other part of the lot" preserves to him only an active servitude upon the immovable sold, and not a right of property in it. Nor do such terms constitute a commencement of proof in writing permitting the vendor to establish by evidence that he had effectively reserved the property in the whole barn.

Doyle v. Couture, 48 Que. S.C. 124.

(§ II D 2—40)—RESERVATION OF LIFE ESTATE — UNDUE INFLUENCE—CANCELLATION.

Burge v. Burge, 24 D.L.R. 912.

(§ II D 2—40)—CONVEYANCE BY PARENTS IN CONSIDERATION OF SUPPORT FOR LIFE — RESERVATIONS AND EXCEPTIONS—HOUSEHOLD AND FARMING EFFECTS.

Clarke v. Clarke, 25 D.L.R. 737.

DE FACTO.

Corporation, see Corporations and Companies.

Officers, see Officers.

DEFAMATION.

See Libel and Slander.

DEFECTS.

In highways, see Highways.

DEFENCES.

To action generally, see Pleading; Action.
To charge of assault, see Assault and Battery.

To action on negotiable paper, see Bills and Notes.

To liability on contract, generally, see Contracts, VI.

Against liability as stockholder, see Corporation and Company.

In action to recover for death, see Death; Negligence; Master and Servant.

In action for false imprisonment, see False Imprisonment; Malicious Prosecution; Arrest.

Defences against criminal charges, see Criminal Law.

DEFENDANTS.

Parties defendant, see Parties, II.

DEFINITIONS.

See Words and Phrases.

DELINQUENCY.

See Juvenile Delinquents; Infants.

DELIVERY.

Indorsement of note before, see Bills and Notes.

By carrier, see Carriers.

Of deed, in escrow, see Deeds.

Of gift, see Gifts.

Of personalty, see Sale.

DEMURRER.

See Pleading, VII.

DENTISTS.

Review of conviction for unlawful practice, see Certiorari, II-28.

See also Physicians and Surgeons.

(§ I-6) — PRACTISING WITHOUT LICENSE.

That an unqualified person is doing dental practice and is seemingly in full charge of the business carried on under the name of another person resident in a distant city for his own benefit may constitute a *prima facie* case of practising in contravention of the Dental Profession Act, R.S.S. ch. 108.

Rex v. Schilling; Cowan v. Schilling, 21 D.L.R. 60, 23 Can. Cr. Cas. 380, 8 S.L.R. 70, 7 W.W.R. 1112.

(§ I-6) — PRACTICE OF DENTISTRY—LICENCE.

A medical surgeon who does not publicly advertise himself as a surgeon dentist may, nevertheless, in his medical practice exercise the art of dentistry even in its mechanical and operative features, such as the extraction of teeth, lead-work, plates, bridges and crowns. He is not obliged in such case

to first obtain a licence from the college of surgeon dentists of the province.

Veilleux v. Roy, 48 Que. S.C. 134.

(§ I-6)—UNLAWFUL PRACTICE OF DENTISTRY — ACTS CONSTITUTING.

The accused was employed in the office of one M., a person duly qualified and entitled to practice, and practising dentistry in Saskatchewan. The services rendered by the accused consisted of filling, extracting, treating and crowning teeth, treating and bridging teeth, and, in general, such work as a dentist might be called upon to do. For such services the accused received no remuneration other than a salary paid to him by the said M. The accused was not the holder of a licence to practice dentistry and dental surgery under the provisions of the Dental Profession Act in Saskatchewan, and had not paid the annual fee required by that Act, nor was the accused a student of dentistry under the provisions of the said Act. Held, that the acts performed by the accused amounted to the practice of dentistry and dental surgery, and that the accused was properly convicted of an offence under the Dental Profession Act.

Rex v. Manning, 8 S.L.R. 333.

(§ I-6)—CHARGE FOR SERVICE — COUNTERCLAIM FOR MALPRACTICE — EVIDENCE — ONUS—FINDINGS OF FACT OF TRIAL JUDGE.
Hume v. McCarthy, 8 O.W.N. 465.**DEPORTATION.**

Of aliens, see Aliens.

DEPOSITIONS.**I. IN GENERAL.****II. TAKING AND RETURNING.****III. OBJECTIONS.****IV. USE ON TRIAL.****V. EXAMINATION OF TRANSFEREES.**

As to discovery and inspection, see Discovery and Inspection.

Use in evidence, see Evidence.

Annotation.

Foreign commission; taking evidence *ex juris*: 13 D.L.R. 338.

I. In general.**(§ I-2)—COMMISSION—DISCRETION AS TO ISSUING.**

The making of an order for a commission to take evidence *ex juris* is a matter of judicial discretion to be exercised according to the particular circumstances of each case. [Fidelity Trust Co. v. Schneider, 14 D.L.R. 224, referred to; Coristine v. Haddad, 21 D.L.R. 350, distinguished.]

First National Bank of Palo Alto v. Kruse, 23 D.L.R. 684, 8 S.L.R. 168, 8 W.W.R. 556.

(§ I-2) — COMMISSIONS — PRINCIPLES GOVERNING.

The principles applicable to the case of a

plaintiff asking for a commission to examine himself should not be applied to the case of a defendant. [New v. Burn, 64 L.J.Q.B. 104, followed.] The Alberta Courts will not direct a defendant obtaining an order for his own examination on commission to deposit any sum to apply on expenses where the plaintiff has sworn that he is unable to provide for the expenses of employing counsel to attend upon the taking of the examination. [Ferguson v. Millican, 11 O.L.R. 36, not applied.]

Walker v. Booth, 32 W.L.R. 210, 8 W.W.R. 633.

(§ I—4a)—DE BENE ESSE IN CRIMINAL CASE.

It is the duty of the trial Judge at a criminal trial to allow only admissible evidence to go to the jury, and he may exclude testimony taken *de bene esse* before a commissioner for use at the trial subject to all proper exceptions, if the testimony be not properly admissible although no exception was taken before the commissioner and the objection was first raised on the tender of the depositions at the trial.

Rex v. Jennie Hawkes, 25 D.L.R. 631, 25 Can. Cr. Cas. 29, 9 W.W.R. 445, 32 W.L.R. 720.

(§ I—4a)—DE BENE ESSE—SUFFICIENCY OF GROUNDS.

Where a plaintiff has selected British Columbia as the place where the action should be brought, it is his duty *prima facie* to bring his witnesses to this province or to shew that it would not be in the interest of justice that he should be compelled to do so. Where a plaintiff seeks to have a material witness examined abroad and the nature of the case is such that it is important he should be examined here, the party asking must shew that he cannot bring him to this province to be examined on the trial. The principal officer of the plaintiff company, who is a material witness, cannot be examined on the plaintiff's behalf under cover of a general leave given by an order for a commission to examine "other persons." Per Irving, J.A. (dissenting): Where a travelling salesman who is a resident of the United States, and a necessary witness, is about to leave the plaintiff company's employ, and would not be under its control on the date of the trial, the inference may be drawn that unless his evidence is secured before he left the plaintiff's employ it could not be obtained at all.

Stewart Iron Works Co. v. B.C. Iron, Wire and Fence Co., 20 B.C.R. 515.

(§ I—4b)—COMMISSION—OFFICERS OF COMPANIES.

An order to take evidence of officers of the applicant company *ex juris* upon commission should not be made without proof of facts shewing that the taking of the evidence in that way is "necessary for the purposes of justice" (Alta. Rule 395); and where it is sought on a motion for directions leave should be given to both parties to file

affidavits. [Park v. Schneider, 6 D.L.R. 451, 5 A.L.R. 423, explained.]

McQuaid v. Prudential Trust Co., 22 D.L.R. 877, 30 W.L.R. 394, 7 W.W.R. 1177.

(§ I—4c)—FOREIGN COMMISSIONS—ABSENCE BECAUSE OF WAR.

In an action for the cancellation of shares on the ground of misrepresentations, the evidence of plaintiffs unable to be present at the trial because engaged in the country's war may be taken on commission, particularly where the proposed evidence is within the defendant's knowledge and which may be met by his fullest preparation. [Park v. Schneider, 6 D.L.R. 451, distinguished.]

Kaye v. Burnsland Addition, Ltd., 24 D.L.R. 232, 8 W.W.R. 1064, 31 W.L.R. 680.

(§ I—4c)—MATERIAL WITNESSES IN OTHER PROVINCE.

Where material witnesses are resident in another province and cannot be compelled to leave that province to give testimony at the trial, the fact that such witnesses are in the employ of the plaintiff company on whose behalf the application is being made to take their evidence under commission will not disentitle the company to an order to take the evidence where the Court is satisfied that the application is *bona fide*, that the witnesses can give material evidence, and that the examination will be effectual. [Murray v. Plummer, 11 D.L.R. 764; Fidelity Trust Co. v. Schneider, 14 D.L.R. 224, distinguished.]

Coristine Limited v. Haddad, 21 D.L.R. 350, 8 S.L.R. 3, 8 W.W.R. 455, 30 W.L.R. 849.

[Distinguished in First National Bank v. Kruse, 23 D.L.R. 684.]

(§ I—4c)—FOREIGN COMMISSION—PARTY RESIDING ABROAD—SUFFICIENCY OF CERTIFICATE.

It will be presumed that a witness whose evidence was taken abroad under a commission is out of the province at the time of the trial and such depositions may be given in evidence under O. XXXVII, r. 18, of the Rules of the Supreme Court, 1909, without proof that the deponent is dead, or beyond the jurisdiction of the Court, or unable from sickness or other infirmity to attend the trial. [Burpee v. Carvill, 16 N.B.R. 141, followed.] A certificate of a stenographer, signed and dated and attached to the depositions, certifying that he took faithful and accurate notes of the examination of the witnesses, and that the writing on the sheets of paper annexed is a faithful and accurate transcript made by him of his notes, is a sufficient compliance with the requirements of the order that the stenographer shall certify the transcript as correct. A certificate signed by a commissioner, certifying that the sheets of paper annexed were furnished to him by the stenographer as containing a transcript of his notes of evidence, followed by the typewritten evidence, is a sufficient compliance with O. XXXVII, r.

16, requiring the deposition to be authenticated by the signature of the commissioner and with the commission requiring the depositions to be signed by the commissioner. *Simpson v. Malcolm*, 43 N.B.R. 79.

(§ I—4c)—WITNESS OUT OF JURISDICTION—WHEN DEPOSITION SET ASIDE.

Where the defendant obtained an order for the examination of a witness out of the jurisdiction on the day following the date of the order, leave was granted to the plaintiffs by the order to apply in Chambers to set aside the depositions upon proof that it was impossible for the plaintiffs to prepare for such examination, and that they would in consequence be seriously prejudiced if the depositions were admitted at the trial.

Gowans Kent v. Assiniboia Club, 31 W.L.R. 196.

(§ I—4c)—DISCOVERY—EXAMINATION OF DEFENDANT RESIDENT OUT OF ONTARIO—PLACE OF EXAMINATION—RULES 328, 331. *Trusts and Guarantee Co. v. Boal*, 8 O.W.N. 476.

(§ I—4c)—FOREIGN COMMISSION—CRIMINAL CAUSE. *Rex v. Rispa*, 9 O.W.N. 50.

(§ I—4c)—FOREIGN COMMISSION—RELEVANCY OF PROPOSED TESTIMONY—ADMISSIONS—DISCRETION. *Clary v. Mond Nickel Co.*, 9 O.W.N. 241.

II. Taking and returning.

(§ II—8)—LETTERS ROGATORY—TESTIMONY FOR USE IN FRENCH COURT—CRIMINATING EVIDENCE. *Re Isler*, 25 D.L.R. 845, 34 O.L.R. 375, 9 O.W.N. 18.

III. Objections.

(§ III—10)—OPPOSITION AFIN D'ANNULER—EXAMINATION OF OPPOSANT.

The deposition of an opposant given under art. 651 C.P.Q. can only avail for the purposes of the motion demanding the rejection of the opposition. This evidence, contrary to that produced under art. 286 C.P.Q., cannot be used upon the merits of the opposition.

Kaine & Co. Transportation v. Morgan, 48 Que. S.C. 421.

IV. Use on trial.

V. Examination of transferees.

(See previous Annual Digests.)

DEPOSITS.

In banks, see Banks.

DEPOT.

Establishment and maintenance of, see Carriers; Railways.

DESCENT AND DISTRIBUTION.

I. RIGHT TO INHERIT.

- A. Who entitled generally.
- B. Effect of alienage.
- C. Effect of illegitimacy or slavery.
- D. Effect of adoption.
- E. Rights of husband and wife.

II. PROPERTY SUBJECT TO DESCENT AND DISTRIBUTION.

III. NATURE AND INCIDENTS OF ESTATE.

As to dower rights of wife, see Dower.

Tax on succession, see Taxes, V.

As to devise or bequest of property, see Wills.

Annotation.

Effect of war on inheritance rights of alien enemies: 23 D.L.R. 375, 380.

I. Right to inherit.

A. WHO ENTITLED GENERALLY.

(§ I A—1)—ABSENTEE SUBSTITUTES.

If the succession is opened and the substitute is an absentee, it goes to those to whom he would have the right to convey it or those who would have succeeded to him.

Picard v. Picard, 48 Que. S.C. 316.

(§ I A—1)—RENUNCIATION BY SUBSTITUTE—NEPHEWS AND NIECES.

Renunciation of a universal legacy before its acceptance in case of substitution is governed by the same rules as one made after the acceptance. Thus, in case of a universal legacy given by a testator to his brother with the obligation of preserving the property and delivering it to his children born or to be born, and on failure of children to his nephews and nieces, if the substitute renounces his universal legacy it is the nephews and nieces who have a right to enjoy the proceeds and revenues on the failure of children of the substitute and not the heirs of the testator, the renunciation by the substitute having the effect of opening the substitution in favour of the institutes. (Inscribed in review.)

Robert v. Martin, 48 Que. S.C. 27.

(§ I A—1)—DISTRIBUTION OF ESTATE—INTESTATE SUCCESSION—ABSENTEE NEXT OF KIN—PRESUMPTION OF DEATH—EVIDENCE.

Re Moore, 9 O.W.N. 282.

(§ I A—1)—DISTRIBUTION OF ESTATE—INTESTATE SUCCESSION—ABSENTEE NEXT OF KIN—PRESUMPTION OF DEATH—EVIDENCE.

Re Peacock, 9 O.W.N. 175.

(§ I A—1)—DISTRIBUTION OF ESTATES—INTESTATE SUCCESSION—ABSENTEE NEXT OF KIN—PRESUMPTION OF DEATH—INQUIRY—REFERENCE—LIABILITY.

Re Duncan, 8 O.W.N. 568.

E. RIGHTS OF HUSBAND AND WIFE.

(I E—20)—MARRIED WOMEN'S RELIEF ACT—RIGHTS OF WIDOW—DEFENCES AVAILABLE TO EXECUTOR.

In an application by a widow under the Married Women's Relief Act, Alta. Stat. 1910, ch. 18, in respect of a will depriving her of property to which she would be entitled under an intestacy, the defences available to the executor under sec. 10 are such specific substantive defences as would have to be set up by the husband if living, in order to constitute a complete answer to an otherwise well-founded action for alimony brought by the wife, and not a defence merely casting the onus of proof of her claim for alimony upon the wife. An isolated act of violence on the part of the husband does not justify the wife in leaving him or refusing to return. [*Lloyd v. Lloyd*, 5 W.W.R. 1173, referred to.]

Re Drewry Estate, 9 W.W.R. 628, 956, 33 W.L.R. 73.

(§ I E—20)—DEVOLUTIONS OF ESTATES ACT—ELECTION OF WIDOW TO TAKE DISTRIBUTIVE SHARE OF ESTATE OF INTESTATE—LANDS SOLD UNDER MORTGAGE—SURPLUS PROCEEDS OF SALE—AGREEMENT—OPTION—ESTOPPEL.

Re Adair, 9 O.W.N. 289.

II. Property subject to descent and distribution.

(See previous Annual Digests.)

III. Nature and incidents of estate.

(§ III—30)—PERSONAL LIABILITY OF BENEFICIAL HEIR—DEFENCES.

The admission of the heir to the benefit of inventory does not confer upon him a double personality. He can be sued personally subject to his right to plead his capacity to obtain an order that the judgment shall be executed only upon the patrimony of the *de cuius*. A beneficial heir sued personally for the purpose of causing him to shew by a quittance the payment to his auteur is without interest to set up this capacity as a bar to the action.

Furois v. Grace, 48 Que. S.C. 89.

(§ III—31)—ACCEPTANCE OF HEIRSHIP—POSSESSION OF EFFECTS BELONGING TO SUCCESSION.

The fact that a son has the custody, public and open, of things belonging to the succession of his father and that he refuses to deliver them to his co-heirs, is not an act of acceptance of heirship nor a diversion of these effects which prevents him from abandoning the succession and oblige him to accept it.

Brulotte v. Brulotte, 24 Que. K.B. 398.

(§ III—31)—POSSESSION OF SUCCESSION—PARTNERSHIP—RIGHT TO JUDICIAL ABANDONMENT.

A demand for judicial abandonment of property cannot be made to a universal

legatee of one of the partners of a commercial firm, if this universal legatee has accepted the estate under the benefit of inventory only, while the delay to make inventory has not yet elapsed. The taking of possession of the property of the succession by means of a "Saisie-conservatoire" by universal legatee does not submit him to a demand of abandonment of property.

Lemesurier v. Mahoney, 47 Que. S.C. 94.

(§ III—31)—DEVOLUTION OF ESTATES ACT—CAUTION—APPLICATION BY ADMINISTRATOR FOR LEAVE TO REGISTER AFTER EXPIRY OF STATUTORY PERIOD—INFANTS—OFFICIAL GUARDIAN—R.S.O. 1914, CH. 119, SEC. 15.

Re Mahler, 7 O.W.N. 752.

DESCRIPTION.

Of land, sufficiency to satisfy Statute of Frauds, see Contracts.

Of parties and subject matter of deed, see Deeds.

Of property conveyed, see Specific Performance.

Of property to mortgage, see Mortgage; Chattel Mortgage.

Of cause of action, see Pleading.

Of beneficiary in will, see Wills, III.

Of property in bill of sale, see Bills of Sale.

DESERTION OF WIFE.

See Husband and Wife, IV; Divorce and Separation.

DESTRUCTION.

Of property, to protect health, see Nuisance; Health; Intoxicating Liquors.

DETAINER.

See Forcible Entry and Detainer.

DEVISE.

See Wills.

DISABILITIES.

Of married woman, see Husband and Wife.

Of incompetent person, see Incompetent Persons.

Of infants, see Infants, I.

Effect of, on running of limitations, see Limitation of Actions.

DISCHARGE.

Of indorser, see Bills and Notes, III.

Of surety, see Principal and Surety; Guaranty, II; Bonds.

On habeas corpus, see Habeas Corpus.

Of servant, see Master and Servant, I.

Of mortgage, see Mortgage, V; Chattel Mortgage.

Of insolvent debtor, see Assignment for Creditors; Insolvency.

DISCONTINUANCE.

Of action, see Dismissal and Discontinuance.

Of highway, see Highways, V.

DISCOVERY AND INSPECTION.

I. IN GENERAL; OF DOCUMENTS.

II. PHYSICAL EXAMINATION.

III. SUBMITTING PERSON TO X-RAYS.

IV. BY INTERROGATORIES OR DEPOSITIONS.

See also Depositions.

Annotation.

Examination and interrogatories in defamation cases: 2 D.L.R. 563.

I. In general; of documents.

(§ I—2)—ACCIDENT REPORTS IN RAILWAY CASES—PRIVILEGE.

An affidavit of documents objecting to produce "all reports, letters, documents, or plans prepared or written for the city solicitor for the purpose of assisting him in defending the action," is insufficient. The reports should be specified together with the names of the officers who made them, so as to enable the Court to decide whether they should be produced or whether they are privileged. Where reports of an accident are made by railway employees in the regular course of their duty, such reports are not privileged, but where they are made for the information of the solicitor of the railway company, for his advice thereon, or to enable him to defend an action, either actually brought or contemplated, they are privileged. [Adam Steamship Co. v. London Ass. Co., 83 L.J.K.B. 1861, referred to.]

United Motor Co. Ltd. v. Regina, 8 W. W.R. 185.

(§ I—2)—PRODUCTION OF DOCUMENTS RETAINED IN SOLICITOR'S OFFICE—INCRIMINATION—PROTECTION—AFFIDAVITS.

A custom for solicitors to retain in their own offices the documents produced by their clients and there to permit inspection of such documents is insufficient to warrant a disregarding of the express terms of r. 425 directing a deposit with the proper officer. An order for production omitting the direction to deposit is insufficient whereon to ground an application for attachment or the striking out of a defence. A man is entitled to protect himself by refusing to answer questions, or to produce documents which might tend to incriminate him, but must in doing so satisfy the Court or Judge that under the circumstances of the particular case an answer of production might have that tendency. On a motion for production of documents disclosed in the affidavit of documents and for which the party has insufficiently claimed protection, he is, as a rule, allowed to file further affidavits for the purpose of shewing that they ought to be protected.

Attorney-General v. Kelly (No. 2), 9 W.W.R. 863.

[Appeal dismissed March 16, 1916.]

(§ I—2)—ACTION AGAINST COMPANY DIRECTORS FOR FRAUD—PRODUCTION OF AUDITORS' REPORTS—WHEN ORDERED—RELEVANCY—PRIVILEGED COMMUNICATIONS.

[See also London Guarantee v. Henderson, 23 D.L.R. 38.]

London Guarantee v. Henderson, 25 D.L.R. 754, 9 W.W.R. 268, 25 Man. L.R. 726.

(§ I—2)—PRODUCTION OF DOCUMENTS AND EXAMINATION OF PARTIES—ACTION FOR POSSESSION AND MESNE PROFITS—PRELIMINARY ISSUE AS TO RIGHT OF POSSESSION—POSTPONEMENT OF DISCOVERY AS TO MEASURE OF MESNE PROFITS—RULE 352—COSTS.

Jarvis v. Keith, 9 O.W.N. 138.

(§ I—2)—PRODUCTION OF DOCUMENTS—EXAMINATION OF DEFENDANT—POSTPONEMENT OF DISCOVERY UNTIL LIABILITY TO ACCOUNT ESTABLISHED.

Foster v. Ryckman, 7 O.W.N. 665.

II. Physical examination.

III. Submitting person to X-rays.

(See previous Annual Digests.)

IV. By interrogatories or depositions.

(§ IV—20)—BENEFICIAL PARTIES—EXAMINATION OF BENEFICIARIES AND DISTRIBUTUTES.

A person entitled to a distributive share as a beneficiary of the estate of an intestate is not a person for whose "immediate benefit" an action is prosecuted by the administrator to recover from a third party funds alleged to be the property of the estate, and such beneficiary therefore cannot be examined for discovery under r. 334, Ont. C.R. 1913. [Stow v. Currie, 14 O.W.R. 223, followed; Macdonald v. Norwich Union Ins. Co., 10 P.R. (Ont.) 462; Garland v. Clarkson, 9 O.L.R. 281, distinguished.]

Trusts and Guarantee Co. v. Smith, 21 D.L.R. 711, 33 O.L.R. 155, 7 O.W.N. 773.

(§ IV—20)—GARNISHMENT—PARTIES AT BENEFIT.

The defendant in an action is not a person "for whose immediate benefit" a garnishee issue in the action is being prosecuted to permit him to be examined for discovery by the garnishee. [Woodley v. Harker, 7 Terr. L.R. 334, 6 W.L.R. 102, followed. Macdonald v. Norwich Union, 10 P.R. 462, distinguished.]

U.S. Fidelity v. Gouin, 31 W.L.R. 912, 8 W.W.R. 1198, 8 S.L.R. 182.

(§ IV—20)—EXAMINATION OF CO-DEFENDANT—"PARTY ADVERSE IN INTEREST"—ACTION TO ESTABLISH WILL—BENEFICIARIES.

Menzies v. McLeod, 25 D.L.R. 777, 34 O.L.R. 572, 9 O.W.N. 166.

(§ IV—20)—JUDGMENT DEBTOR—EXAMINATION OF—SCOPE OF INQUIRY—REFUSAL TO ANSWER AS TO ASSETS REMOVED TO ANOTHER PROVINCE—RULES 580, 587—ORDER FOR FURTHER EXAMINATION—REFUSAL OF LEAVE TO APPEAL.

McGuinty v. Hamer, 8 O.W.N. 228.

(§ IV—20)—EXAMINATION OF PARTIES—SCOPE OF—LIMITATION OF CASE MADE ON PLEADINGS—FOUNDATION FOR AMENDMENT.
Clarke v. Robinet, 8 O.W.N. 263.

(§ IV—31)—MISFEASANCE SUMMONS UNDER WINDING-UP ACT—DIRECTORS.

This was an appeal from the settlement by the district registrar of terms for an order under a misfeasance summons pursuant to sec. 123 of the Dominion Winding-up Act, R.S.C. 1906, ch. 144, against certain directors of the company for alleged misapplication of trust funds. The directors were seeking a term in the order by which they should be enabled to have the same rights of discovery by viva voce examination, delivery of interrogatories and discovery of documents as if the application had been an action or actions in the Supreme Court. Sections 134 and 135 of the Dominion Winding-up Act were quoted by counsel for the applicant and directors. Murphy, J., held that the order should contain a term giving discovery as asked, and that the appeal should be allowed, but as he had expressed a contrary opinion on the preliminary hearing of the summons, that the allowance of the appeal should be without costs.

Re Traders Trust & Kory, 8 W.W.R. 1080.

(§ IV—31)—OFFICER—MASTER OF GOVERNMENT DREDGE.

Upon an application being made in Chambers for an order to examine the master of a Government dredge for the purposes of discovery, in a proceeding by petition of right for damages arising out of an accident to an oiler employed on such dredge:—Held, that the master of the dredge was not an "officer" within the meaning of the rule in question.

Montgomery v. the King (No. 1), 15 Can. Ex. 372.

(§ IV—31)—EXAMINATION OF OFFICER OF COMPANY—MANAGING DIRECTOR—EMPLOYEES OR SERVANTS AS DISTINGUISHED FROM OFFICIALS.

Elliott v. Holmwood, 25 D.L.R. 765, 9 W.W.R. 490.

(§ IV—31)—EXAMINATION OF PARTIES—COMPANY DIRECTORS—BREACHES OF TRUST—FRAUD—QUESTIONS AS TO SUMS PAID OUT OF TREASURY OF COMPANY TO DIRECTORS—GENERAL MANAGER OF COMPANY BOUND TO ANSWER.

Moody v. Hawkins, 7 O.W.N. 775.

(§ IV—31)—EXAMINATION OF A DEFENDANT AS A PARTY AND AS AN OFFICER OF DEFENDANT COMPANIES—DISCLAIMER OF INTEREST—SCOPE OF EXAMINATION—PERSONAL KNOWLEDGE OBTAINED IN ANY CAPACITY—SINGLE EXAMINATION.

Kennedy v. Suydam, 8 O.W.N. 65.

(§ IV—31)—EXAMINATION OF OFFICER OF CORPORATION—PARTY—PLACE OF EXAMINATION—DISCRETION OF JUDICIAL OFFICER—RULE 329—APPEAL.

Anglo-American Fire Ins. Co. v. International Steel Corp., 9 O.W.N. 287.

(§ IV—32)—EXAMINATION FOR DISCOVERY—REFUSAL TO ANSWER QUESTIONS—DELAY—ACTION FOR LIBEL—FOREIGN NEWS-PAPERS.

Arsenych v. West Canada Pub. Co., 23 D.L.R. 896, 8 W.W.R. 920, 31 W.L.R. 604.

(§ IV—33)—EXECUTION DEBTOR—EXAMINATION OF WIFE.

Killops v. Porter, 24 D.L.R. 888, 9 W.W.R. 181, 32 W.L.R. 469.

DISCRETION.

Review on appeal, see Appeal, VII.

As to granting liquor licence, see Intoxicating Liquors, II.

Mandamus to compel exercise of discretionary power, see Mandamus.

In refusing specific performance, see Specific Performance.

As to awarding costs, see Costs, I.

DISMISSAL AND DISCONTINUANCE.

Of appeal, see Appeal, VI.

(See previous Annual Digests.)

DISORDERLY HOUSES.

Validity of contract relating to, see Contracts, III.

(§ I—1)—BAWDY HOUSE—PROSTITUTE—EVIDENCE OF GENERAL REPUTATION.

Reputation or mere hearsay is insufficient evidence upon which a Court can hold that a woman has been proved to be a prostitute. Evidence that a known prostitute occupies a house, arranged with two men on different occasions that she would with each of them on a future occasion at that house commit acts of prostitution, nothing being done pursuant to these arrangements, and no act of prostitution in the house having been proved to have taken place at any time, is insufficient to sustain a charge of keeping a bawdy house. [R. v. McNamara, 20 O.R. 489, applied.] Evidence of the general reputation of a house taken alone is insufficient whereon to convict a person of keeping a bawdy house. [Reg. v. St. Clair, 27 A.R. 308, applied.]

Rex v. Sands, 9 W.W.R. 496, 25 Can. Cr. Cas., 25 Man. L.R. 690.

(§ I—1)—SUFFICIENCY OF CONVICTION—VAGABONDAGE.

A person can be found guilty of having kept a disorderly house without mention of the fact that he has rendered himself guilty of vagabondage.

Ex parte Evans, 48 Que. S.C. 469.

(§ I—5)—OFFENCE OF KEEPING—STATING PLACE OF OFFENCE.

A conviction made by a magistrate for keeping a bawdy house will not be quashed because it is not expressly shewn in the dispositions that the street address referred to

in the depositions was in fact in the city which was named as the place of the offence in both the information and the formal conviction, although the magistrate's jurisdiction was limited to that city. [R. v. C.P.R. Co., 14 Can. Cr. Cas. 1, 1 A.L.R. 341, applied.]

Rex v. Marceau, 22 D.L.R. 336, 8 A.L.R. 510, 23 Can. Cr. Cas. 456, 7 W.W.R. 1174, 30 W.L.R. 418.

DISQUALIFICATION.

Of candidates for election, see Elections.
Of public officer, see Officers.

DISTRESS.

For rent, see Landlord and Tenant, III.
For principal and interest, see Vendor and Purchaser; Mortgage; Chattel Mortgage.

DISTRIBUTION.

Of decedent's estate, see Executors and Administrators, IV; Descent and Distribution.

Under wills, see Wills.

DISTRICT COURT.

Jurisdiction of, see Courts.

DIVORCE AND SEPARATION.

I. IN GENERAL.

II. SUIT FOR ANNULMENT AND JURISDICTION THEREOF.

III. GROUNDS.

- A. Cruelty; ill-treatment.
- B. Desertion.
- C. Drunkenness; use of morphine.
- D. Imprisonment; miscellaneous.
- E. Adultery.

IV. DEFENCES; CONNIVANCE; RECRIMINATION.

V. ALIMONY.

- A. In general.
- B. Temporary alimony; suit money.
- C. Permanent allowance.
- D. Subsequent change.

VI. OTHER PROPERTY RIGHTS.

VII. CUSTODY AND SUPPORT OF CHILDREN.

VIII. AGREEMENTS FOR SUPPORT AND MAINTENANCE.

- A. In general.
- B. Validity of.

Presumption as to validity of marriage, see Evidence.

Annulment of marriage, see Marriage.
Constitutional powers of Province or Dominion as to, see Constitutional Law.

I. In general.

(See previous Annual Digests.)

II. Suit for annulment and jurisdiction thereof.

(§ II—6)—DOMICILE OF TRAVELLING SALESMAN—PLACE OF ADULTEROUS ACTS.

The residence of a travelling salesman for

the period of one year and a month, coupled with his affidavit of his intention as to permanent residence, does not establish a sufficient change of domicile for jurisdictional purposes in a divorce proceedings on grounds of adultery committed in another province.

Walcott v. Walcott, 23 D.L.R. 261, 48 N.S.R. 322.

III. Grounds.

A. CRUELTY; ILL-TREATMENT.

(§ III A—18)—LEGAL CRUELTY—ABUSIVE LANGUAGE.

Abusive language held sufficient to constitute legal cruelty, as reviving former matrimonial offences. (Wilson v. Wilson, 6 Moo. P.C. 484; Bavin v. Bavin, 27 O.R. 571; and Lovell v. Lovell, 11 O.L.R. 547, referred to.)

Cherrington v. Cherrington, 9 W.W.R. 146, 32 W.L.R. 438, 9 A.L.R. 181.

IV. Defences; connivance; recrimination.

(See previous Annual Digests.)

V. Alimony.

A. IN GENERAL.

(§ V A—45)—ALIMENTARY ALLOWANCES—INCREASE.

It is not necessary to bring an action to have an alimentary allowance increased; the right to it can be exercised by means of a petition.

Hainault v. Guy, 48 Que. S.C. 209.

(§ V A—45)—ALIMONY—WIFE'S ANTE-NUP-TIAL CHASTITY.

[Hogg v. Hogg, 20 D.L.R. 85, affirmed.]

Hogg v. Hogg, 21 D.L.R. 862, 25 Man. L.R. 226, 8 W.W.R. 111, 30 W.L.R. 802.

(§ V A—45)—ALIMONY—DESERTION—QUANTUM OF ALLOWANCE—LEAVE TO APPLY—COSTS.

Belisle v. Belisle, 8 O.W.N. 296.

(§ V A—46)—JUDGMENT EN SEPARATION DE CORPS—ADULTERY OF WIFE.

Even though the husband has obtained, on the ground of adultery on the part of the wife, a judgment *en séparation de corps*, the wife, according to the law of Quebec, is entitled to a decree for alimony, but the Court should consider the means of the husband and the conduct of the wife in fixing the amount.

Hamilton v. Church, 24 D.L.R. 266, 24 Que. K.B. 26, varying 20 D.L.R. 639.

B. TEMPORARY ALIMONY; SUIT MONEY.

(§ V B—50)—INTERIM ALIMONY—SEPARATION AGREEMENT AS BAR—COSTS.

The Supreme Court of Alberta has power to grant interim alimony. A deed of separation executed by a wife at the persuasion of a husband and without independent advice is not a bar to interim alimony. The plaintiff

in alimony actions is entitled to have her costs paid upon taxation subject to the right of the husband to dispute the same on the grounds of the wife having separate estate or sufficient means to pay her own costs. [Riddell v. Riddell, 5 W.W.R. 241, followed.] East v. East, 7 W.W.R. 1239.

(§ V B—52)—ACTION FOR ALIMONY—INTERIM DISBURSEMENTS—COUNSEL FEE—AGENCY FEES—UNDERTAKING OF PLAINTIFF'S SOLICITORS—PRACTICE.
Foord v. Foord, 9 O.W.N. 139.

VI. Other property rights.

(See previous Annual Digests.)

VII. Custody and support of children.

(§ VII—75)—AGREEMENT AS TO—ACCESS TO CHILD.

A separation agreement providing the custody and control of a child with the wife and its maintenance and education by the husband with a privilege to the husband of access to the child entitles the husband to access to the child only while in the mother's custody and control, and unless it is otherwise stipulated he cannot object to the mother's presence in the room during his visits to see the child. [Evershed v. Evershed, 46 L.T.R. 690; Rice v. Frayser, 24 Fed. Rep. 460, referred to.]

Re M., an Infant, 22 D.L.R. 435, 33 O.L.R. 515, 8 O.W.N. 265.

VIII. Agreements for support and maintenance.

(See previous Annual Digests.)

DOCKS.

See Harbours; Waters.

DOCUMENTS.

Order for production of, see Discovery and Inspection.

Admission in evidence, see Evidence, IV.

DOGS.

Liability for killing of or injury to, see Animals.

DOMICILE.

As affecting divorce, see Divorce and Separation.

As affecting status of persons, see Conflict of Laws.

(§ I—4)—CHANGE OF—INTENTION—RESIDENCE.

An intention to make an abandonment or change of domicile must be proved by satisfactory evidence; domicile may be changed by the choice of another domicile evidenced by residence within the territorial limits to which the jurisdiction of the new domicile extends. [Re Martin, [1900] P. 211, followed.] Udny v. Udny, L.R. 1 Sc. App. 441; Huntly

v. Gaskell, [1906] A.C. 56; Winans v. Atty.-Gen., [1904] A.C. 287, applied.] Selfert v. Seifert, 23 D.L.R. 440, 32 O.L.R. 423, 7 O.W.N. 440.

DONATIO MORTIS CAUSA.

See Gift; Wills.

DONATION.

See Gift, I.

Charitable bequests, see Wills; Charities.

DOWER.

I. RIGHT TO.

- A. Nature and extent.
- B. In what property.
- C. How barred.

II. RIGHTS AND REMEDIES OF WIDOW.

Election to take under will, see Will.

Relief to widow, see Descent and Distribution.

I. Right to.

C. HOW BARRED.

(§ I C—18)—JOINING IN MORTGAGE—FORECLOSURE.

Where a married woman joined with her husband in a mortgage of his freehold property, and the husband afterwards gave a second mortgage on the property in which the wife did not join, on motion for foreclosure and sale:—Held, that the wife's dower was barred on the ground that she had not appeared and defended the action. Quaere: Under the circumstances would the wife's dower be completely barred by the ordinary order for foreclosure and sale? Vaughan v. Parker, 43 N.B.R. 442.

II. Rights and remedies of widow.

(See previous Annual Digests.)

DRAINS AND SEWERS.

Improper construction, liability of municipality, see Municipal Corporations II.

Annotation.

Cost of work; power of referee: 21 D.L.R. 286.

(§ II—10)—DITCHES AND WATERCOURSES—PROCEDURE—INFANT'S LAND—NOTICE—GUARDIAN.

The guardian intended by the interpretation clause (sec. 3) of the Ditches and Watercourses Act, R.S.O. 1897, ch. 285, is such as has by law the management and control of the infant's land, and not merely the guardian of his person; and notice of proceedings under the Act, given to the father of an infant whose land was affected by the proceedings—the father not having been appointed guardian of the infant's estate—is insufficient to satisfy sec. 8 of the Act, which requires notice to be given to every "owner," and the infant so improperly made a party to the proceedings is not bound by the award therein rendered, and all proceed-

ings had thereunder are invalid. [32 O.L.R. 184, reversed.]

Healy v. Ross, 22 D.L.R. 408, 33 O.L.R. 368, 8 O.W.N. 134.

DRUGS AND DRUGGISTS.

(§ I—1)—LIABILITY FOR UNLAWFUL SALE.

A druggist who sells medicine for promoting dog breeding, composed of dangerous drugs, without consulting a veterinary and without possessing the necessary knowledge for the purpose, is liable for damages suffered by the owner of the dog if the latter dies on account of this medicine.

Van Camp v. Freeman, 48 Que. S.C. 410.

(§ I—1)—OPERATING DRUG BUSINESS UNDER ANOTHER'S LICENSE—PENALTY.

One who, being neither a physician nor a licensed chemist, operates a pharmacy or drug store in the name of other licensed persons is liable for the penalty imposed by art. 5023, R.S.Q. 1909, even when the latter have made and registered a declaration to the effect that they themselves carry on the business of pharmacy, and that the defendant had given them absolute control of the sale of drugs and poisons, reserving only to himself a financial share.

Pharmaceutique Ass'n of Quebec v. Bergeron, 47 Que. S.C. 175.

DRUNKENNESS.

Regulation of intoxicants, see Intoxicating Liquors.

DUPLICITY.

In indictment or information, see Indictment, Information and Complaint.

In pleading, see Pleading.

In conviction, see Summary Conviction.

DURESS.

As affecting contracts, see Contracts; Bills and Notes.

As affecting wills, see Wills.

As affecting deeds, see Deeds.

DUTIES.

Succession duties, see Taxes.

(§ I—12)—CUSTOMS ACT—SMUGGLING—SEIZURE OF GOODS—RELEASE.

Where jewellery not dutiable is mixed with dutiable jewellery which is being smuggled into Canada and all are seized for infraction of the Customs Act, the seizure is justified as to both dutiable and non-dutiable goods, but as to any of the latter shewn to the satisfaction of the Exchequer Court (Can.) to be the separate property of the wife of the party against whom the seizure was made, the seizure may be released under the power conferred on the Court to decide "according to the right of the matter" (Customs Act, sec. 180). [R. v. Sixbarrels, 8 N.B.R. 387; Dominion Bag Co. v. The Queen, 4 Can. Ex. 311, referred to.]

Burm v. The King, 22 D.L.R. 483, 15 Can. Ex. 91.

EARLY CLOSING.

Of liquor places, see Intoxicating Liquors.

EASEMENTS.

- I. WHAT CONSTITUTES; NATURE; KIND.
- II. CREATION; HOW ACQUIRED.
 - A. In general; by express terms.
 - B. By prescription.
 - C. As appurtenant; by necessity.
- III. EXTENT OF RIGHTS.
- IV. HOW LOST.

Between abutting owners, see Lateral Support; Adjoining Owners; Party Walls.
Reservation in deed, see Deeds.
In waters generally, see Waters.
As distinguished from license, see License.
Estoppel to deny right of, see Estoppel.

I. What constitutes; nature; kind.

(See previous Annual Digests.)

II. Creation; how acquired.

A. IN GENERAL; BY EXPRESS TERMS.

(§ II A—5)—PRIVATE WAY—DEED—ESTABLISHMENT OF LOCUS—DEFINED WAY—INTERFERENCE—DAMAGES—LEAVE TO SUPPLY NEW WAY—JUDGMENT—REFERENCE—WAY OF NECESSITY.

Fitzgerald v. Canada Cement Co., 9 O.W.N. 79.

B. BY PRESCRIPTION.

(§ II B—10)—PRESCRIPTION AGAINST CROWN.

Before 1903 (C.S.N.B. 1903, ch. 156) there existed no laws in New Brunswick whereby a subject could prescribe an easement as against the Crown.

The King v. Tweedie, 22 D.L.R. 498, 15 Can. Ex. 177.

[Reversed in 52 Can. S.C.R. 197.]

(§ II B—10)—RIGHT TO USE VACANT LAND FOR TURNING VEHICLES—PRESCRIPTION—USER—EVIDENCE.

Simmons v. Powell, 8 O.W.N. 274.

(§ II B—13)—WAY—ASSERTION OF RIGHT OF USER—PUBLIC HIGHWAY—PLAN—ESTOPPEL—ABANDONMENT—EVIDENCE.

Vansickle v. James, 9 O.W.N. 146.

C. AS APPURTENANT; BY NECESSITY.

(§ II C—29)—ACCESS TO LAND—RIGHT OF WAY—PRIVATE WAY UNNECESSARY IF HIGHWAY AVAILABLE—ACCEPTANCE OF DEDICATION PROFFERED BY REGISTRATION OF PLAN—MUNICIPAL BY-LAW—COSTS OF ACTION.

Aroni v. Wilson, 9 O.W.N. 295.

III. Extent of rights.

(§ III—32)—RIGHT OF WAY—ENCROACHMENT BY BUILDING.

The person having title only to a right of

way over land the fee of which is in another, cannot maintain an action for encroachment of a cornice of an adjoining building over the passage-way unless it interferes with the reasonable use of the way. [Rooney v. Petry, 22 O.L.R. 101, referred to.]

Ridge v. M. Brennen & Sons, 22 D.L.R. 594, 7 O.W.N. 829.

(§ III—32)—OBSTRUCTION OF PASSAGE-WAY—INTERESTED PARTIES.

A vendor who has obliged himself to give a clear and free passage over a piece of land, and never to sell it and never to allow it to be used for any other purpose than a public street, as a passage-way, has a sufficient interest in it to bring an action against any person obstructing that passage without right. A proprietor of a lot of land who has a title containing the following clause: "with the right of passage in common with others having titles thereto on this avenue," has no right to erect any building on that street and to obstruct the passage-way of the adjoining proprietors who are entitled to it.

Gouin v. Javelle, 47 Que. S.C. 79.

IV. How lost.

(§ IV—45)—DRAINAGE RIGHTS AND WATER SUPPLY—TERMINATION OF—ADJOINING TENEMENT—SEVERANCE OF THE PROPERTY—BY-LAW MAKING IT UNLAWFUL TO DRAIN TWO TENEMENTS BY COMMON PIPE.

Wilson v. Smith, 22 D.L.R. 909, 8 O.W.N. 117.

(§ IV—46)—RIGHT OF WAY—NON-USER—ABANDONMENT.

A mere non-user by the abutting owners of a right of way or street as it appears of a registered plan of survey does not of itself, where there is no intention to that effect, operate as an abandonment of such rights; but these private rights or easements abate when the street becomes a public highway, and cannot be relied upon as a bar to the right of the municipality to close the street.

Jones v. Tp. of Tuckersmith; Re Jones & Tp. of Tuckersmith, 23 D.L.R. 569, 33 O.L.R. 634, 8 O.W.N. 344.

EJECTMENT.

I. WHEN PROPER REMEDY.

II. TITLE AND DEFENCES.

- A. Sufficiency of plaintiff's title.
- B. Defences.

III. VERDICT; JUDGMENT; RELIEF GENERALLY.

- A. Verdict; judgment, obtaining possession.
- B. Mesne profits; improvements; emblements.

IV. STATUTORY NEW TRIAL.

Eviction by landlord, see Landlord and Tenant.

Ejectment from car, see Carriers; Street Railways.

Determining title to land, see Land Titles;

Vendor and Purchaser; Adverse Possession; Trespass.

Annotation.

Ejectment as between trespassers upon unpatented land; effect of priority of possessory acts under colour of title: 1 D.L.R. 28.

I. When proper remedy.

(§ I—1) — PURCHASER IN POSSESSION OF LANDS.

A vendor who has put the purchaser in possession on being paid the purchase money has lost his right to maintain ejectment against the latter although no grant or formal conveyance was made; nor can the heirs of such vendor maintain ejectment against the successors of such purchaser in the possessory title long acquiesced in by the decedent vendor and by themselves.

Halifax Power Co. v. Christie, 23 D.L.R. 481, 48 N.S.R. 264.

[Appeal to Canada Supreme Court dismissed Oct. 12, 1915.]

II. Title and defences.

A. SUFFICIENCY OF PLAINTIFF'S TITLE.

(§ II A 2—15)—TITLE TO LAND—ACTION OF EJECTMENT—PAPER TITLE—POSSESSION BY ONE OF THE HEIRS AT LAW OF PATENTEE FROM CROWN—TAX SALE—INVALIDITY—DISTRESS ON PREMISES—SUFFICIENCY—ASSESSMENT ACT, R.S.O. 1897, CH. 156—TITLE BY POSSESSION—LIMITATIONS ACT. McAllister v. Defoe, 8 O.W.N. 175, 405.

III. Verdict; judgment; relief generally.

IV. Statutory new trial.

(See previous Annual Digests.)

ELECTION FRAUD.

See Elections, II D.

ELECTION OF REMEDIES.

I. CHOICE.

II. EFFECT; PURSUING TWO REMEDIES.

I. Choice.

(§ I—1)—CONCURRENT RIGHTS.

When a plaintiff has separate, concurrent or successive rights of action on the same transaction, or for the same injury, he can have only one full satisfaction; this obtained, his further actions or remedies will be barred. [23 Cyc. 1193, referred to.]

Black v. Dominion Fireproofing Co., 23 D.L.R. 161, 8 W.W.R. 823, 31 W.L.R. 352.

II. Effect; pursuing two remedies.

(§ II—10)—ACTION AGAINST PRINCIPAL OR AGENT—CHOICE.

For the purpose of determining their liability an agent acting for an undisclosed principal may be sued jointly with his principal; but if a judgment has been recovered against either in an action against them

jointly or in an action against either separately, it will bar the prosecution of an action against either of them on the same grounds.

M. Brennen & Sons v. Thompson, 22 D.L.R. 375, 33 O.L.R. 465, 8 O.W.N. 206.

[Followed in *Davis Acetylene Gas Co. v. Morrison*, 23 D.L.R. 871.]

ELECTIONS.

I. VOTERS.

- A. Right to vote; residence.
- B. Registration.

II. ELECTIONS.

- A. In general.
- B. Ballots.
- C. Result; (canvassing); recounts.
- D. Election frauds; crimes.

III. NOMINATIONS (PRIMARYS); POLITICAL COMMITTEES.

IV. CONTESTS.

Of corporate officers, see *Corporations and Companies*.

As to local option elections, see *Intoxicating Liquor*.

Service and renewal of writs, see *Writ and Process*.

I. Voters.

A. RIGHT TO VOTE; RESIDENCE.

(§ I A—8)—MUNICIPAL ELECTION—VOTERS' LIST—REVISION—FINALITY.

When the validity of an election is questioned under sec. 92 of the *Municipal Elections Act*, if it appears that the voters' list had been prepared and revised in accordance with the formalities required by the Act, it will be taken to have been revised "in accordance with law," and the Court will not go behind the revision to inquire into the qualifications of the voters.

Re Kerr and Gold, 20 B.C.R. 589.

(§ I A—8)—MUNICIPAL ELECTION—VOTERS' LISTS—PETITION TO ANNUL.

In municipal matters concerning the list of electors prepared under the *Election Act*, recourse may be had to the *Code of Procedure* to give full and complete efficacy to this Act. A motion asking for dismissal of a petition for annulment of a decision of a municipal council in relation to this list cannot be granted by a Judge, the Superior Court alone having jurisdiction.

Bourassa v. City of Salaberry, 48 Que. S.C. 267.

(§ I A—8)—MUNICIPAL ELECTION—QUALIFICATION OF VOTERS—NAMES ON VALUATION ROLL.

A municipal council has not the right to register on the eve of a municipal election, merely for the purposes of the election, without a previous notice in writing of a change of ownership in property on the valuation roll in force. And even if this change has been demanded in writing, as it was a serious matter, and as it should have been authorized by resolution of the council, it cannot be invoked for the purposes of a municipal election, if, at the time when the

person presents himself to exercise his right as an elector his name does not appear on the valuation roll in force and this change of ownership has not been inscribed on the valuation roll.

Messier v. Lefebvre, 47 Que. S.C. 354.

II. Elections.

D. ELECTION FRAUDS; CRIMES.

(§ II D—75)—ELECTION EXPENSES—LEGITIMACY OF.

Payment of legitimate election expenses are to be made through the candidate's official agent in an election subject to the *Elections Act*, Alta.; but as no penalty or punishment is prescribed by the Act for the payment of such expenses personally by the candidate, his doing so is not a corrupt practice invalidating the election, but is merely a prohibited act probably punishable under the *Criminal Code* as a wilful disobedience of a provincial statute.

Rudyk v. Shandro, 21 D.L.R. 250, 7 W.W.R. 1082, 30 W.L.R. 428.

[Reversed in 21 D.L.R. 266, 8 A.L.R. 425.]

(§ II D—75)—BRIBERY, SUFFICIENCY OF CHARGE.

A charge of personal bribery against a candidate at an election which, if sustained, would cause the candidate's disqualification, must be established beyond a reasonable doubt and not upon a mere balancing of probabilities. [*Rudyk v. Shandro*, 21 D.L.R. 250, reversed.]

Rudyk v. Shandro, 21 D.L.R. 266, 8 A.L.R. 425, 7 W.W.R. 1321, 30 W.L.R. 689.

(§ II D—75)—ILLEGAL ACTS—KNOWLEDGE OF.

In order to disqualify a candidate at a municipal election in respect of unauthorized illegal acts committed by his agents, he must be shewn to have had knowledge of such acts.

Rex ex rel. Mitchell v. McKenzie, 21 D.L.R. 438, 33 O.L.R. 196, 7 O.W.N. 841.

(§ II D—75)—CORRUPT PRACTICES—AGENT OF CANDIDATE GIVING LIQUOR TO VOTERS.

Charges of corrupt practice which if proved would result in disqualification should be dealt with in the same way as if the charges were criminal ones and proved beyond a reasonable doubt. The duly appointed agent of a candidate kept liquor in a stable at the polling place and gave drinks of it to voters after voting:—Held, such a corrupt practice as to avoid the election, and not one of a trivial, unimportant and limited character. [*Rudyk v. Shandro*, 21 D.L.R. 266, followed.]

Rosthern Election Petition, 31 W.L.R. 184, 8 W.W.R. 793.

[Reversed in 9 W.W.R. 1044.]

III. Nominations (primaries); political committees.

(§ III—80)—MUNICIPAL ELECTION—ELIGIBILITY OF CANDIDATES.

The president of a municipal election has

a discretion to exercise in the nomination of the candidates. Before putting a candidate in nomination conformably with art. 309, M.C., the president should assure himself of the eligibility of the person proposed, and if he considers him not qualified to be nominated he should shew him a *proces-verbal* of the reasons justifying him for his refusal to do so.

Messier v. Lefebvre, 47 Que. S.C. 354.

(§ III—80)—PROPERTY QUALIFICATION BEFORE NOMINATION—VALUATION.

No disposition of the law declares that a candidate in a municipal election should, for the 12 months preceding his nomination, possess as owner the same immoveable; he may be qualified by several immoveables, provided that during this period he had never ceased to own real estate of the value required by law. To establish the value of the immoveables upon which a candidate for municipal office may qualify, recourse should be had to the municipal valuation roll in force at the date of nomination. The fact that the candidate elected did not in the declaration sent to the returning officer mention the immoveable on which he qualified will not annul his election when no other objection is taken to his nomination.

Birchall v. Decary, 48 Que. S.C. 418.

(§ III—80)—DISQUALIFICATIONS—INTEREST IN MUNICIPAL CONTRACTS.

Section 22, sub-sec. (1), of the Edmonton Charter, having reference to persons interested in a contract with the city, is limited in its operation to qualifications or disqualifications for election. The contract between the city of Edmonton and the Edmonton Industrial Association Drilling Co. is not a contract relating to municipal works or undertakings so as to fall within sec. 470. [Rex v. McNamara, 7 W.W.R. 324, distinguished.]

Rex ex rel. La Fleche v. Sheppard, 8 W.W.R. 593.

(§ III—82)—STATUTORY PERIOD FOR NOMINATION—NON-COMPLIANCE.

When the definite statutory hour for nomination of municipal councillors is departed from deliberately and intentionally, the election cannot be said to have been conducted in accordance with the Municipal Act, R.S.O. 1914, ch. 192, so as to make applicable the curative provisions of sec. 150.

Rex ex rel. Yates v. Lawrence, 22 D.L.R. 599, 7 O.W.N. 819.

IV. Contests.

(§ IV—90)—PETITIONING VOTERS—QUALIFICATIONS OF.

The status of the petitioners as voters qualified to vote and so to bring a petition under the Controverted Elections Act, Man., may be shewn by the list of voters for the election as revised by the revising officer, and identified by him and the clerk of the

executive council; and it is not essential that such proof should be supplemented by proving that the petitioners' names were also on the list furnished to the deputy returning officer, and used at the poll. [Riche-lieu Election Case, 21 Can. S.C.R. 168, distinguished; Re Macdonald Election, 8 D.L.R. 793, 23 Man. L.R. 542, and Re Provencher Election, 13 Man. L.R. 444, referred to.]

Re Lakeside Provincial Election; Tidsbury v. Garland, 23 D.L.R. 411, 25 Man. L.R. 197, 8 W.W.R. 33, affirming 20 D.L.R. 286.

(§ IV—90)—PETITIONING VOTERS—CITIZENSHIP—AGE.

The revised list of voters is conclusive as to the right to vote at a Manitoba provincial election, subject to the voter taking the oath if called upon to do so; consequently an election petition under the Controverted Elections Act, Man., will not be set aside on a preliminary objection that the petitioners were not proved to be British subjects and twenty-one years of age where their names appeared on such revised list and no other evidence was given on that question.

Re Lakeside Provincial Election; Tidsbury v. Garland, 23 D.L.R. 411, 25 Man. L.R. 197, 8 W.W.R. 33, affirming 20 D.L.R. 286.

(§ IV—90)—PETITION—REGULARITY OF OATH.

It is not an objection to an election petition under the Controverted Elections Act, Man., that the petitioners took the oath before the commissioner on making the verifying affidavit with uplifted hand without the use of a testament and without its being shewn that they had any conscientious scruple against taking an oath upon the book. [Curry v. The King, 15 D.L.R. 347, 48 Can. S.C.R. 532, 22 Can. Cr. Cas. 191, applied.]

Re Lakeside Provincial Election; Tidsbury v. Garland, 23 D.L.R. 411, 25 Man. L.R. 197, 8 W.W.R. 33, affirming 20 D.L.R. 286.

(§ IV—90)—RULES—PRACTICE.

The Controverted Elections Act, Man., has the effect of repealing the rules passed under the former Act and substituting the English election petition rules as in force in England on May 26, 1874, until new rules shall be promulgated under the Manitoba Act.

Re Lakeside Provincial Election; Tidsbury v. Garland, 23 D.L.R. 411, 25 Man. L.R. 197, 8 W.W.R. 33, affirming 20 D.L.R. 286.

(§ IV—90)—DISQUALIFYING CANDIDATE—FORM OF REMEDY—QUO WARRANTO OR PETITION.

Where six aldermen were to be elected, and it is alleged that eight were nominated, and that the returning officer publicly declared the names of the candidates and the

place and time for a poll, but on the following day issued a notice purporting to disqualify two of the candidates and declaring the other six elected by acclamation, the remedy of quo warranto is open notwithstanding sec. 92 of the Municipal Act, ch. 71, R.S.B.C. 1911. Six aldermen were to be elected for the city of Cranbrook. It was alleged upon affidavit that 8 were nominated, and that the returning officer publicly announced their nomination and named the place and time for a poll. On the day after the nomination day the returning officer issued a public notice stating that objections to two candidates had been received and upheld, and that as a result the other six were elected by acclamation. One of the candidates so disqualified took out a notice of motion to shew cause why an information in the nature of a quo warranto should not issue against the six to determine by what authority they exercised the office of aldermen. It was argued for the six that sec. 92 abolished the right to quo warranto proceedings, and that the only remedy was by an election petition. For the motion it was urged that sec. 92 refers not to elections by acclamation but only to contested elections sought to be invalidated upon the specific grounds set out in the section. *Tod v. Mager*, 2 W.W.R. 185, was cited in support of the motion:—Held by Hunter, C.J., that if the Legislature had intended to substitute a petition for quo warranto in all cases the language of the statute would have so indicated in terms, and that this not being a contested election on any of the grounds in sec. 92, the old form of relief by way of quo warranto is still open. Held, further, that sub-sec. (f) of sec. 92, which states that "no writ of quo warranto shall hereafter issue in respect of any municipal election after the expiration of thirty days from the declaration by the returning officer of the candidates elected," means that no proceedings by way of quo warranto shall be instituted after the expiration of such time.

Rex ex rel. McFarlane v. Balment, 8 W.W.R. 111.

(§ IV-90)—CONTROVERTED MUNICIPAL ELECTION—QUALIFICATION OF CANDIDATE.

In a controverted municipal election in which the contesting party asks to be declared the candidate elected, the Court generally refuses to grant this application if such candidate has obtained only the minority of the votes and if the contestation is based upon the absence of qualification in the candidate elected, and when the objection is not taken at the time of nomination, but it has the power to do so.

Birchall v. Decary, 48 Que. S.C. 418.

(§ IV-90)—MUNICIPAL ELECTION OF CONTROLLER—INTERVENTION TO CONTINUE CONTEST.

An elector has no right to intervene in the contestation of the election of a controller of the city of Montreal merely to watch the

proceedings and continue them in case the petitioners should abandon them.

Charpentier v. Hébert, 48 Que. S.C. 13.

(§ IV-90)—MUNICIPAL ELECTION—DISQUALIFICATION OF COUNCILLOR—LIABILITY FOR ARREARS OF TAXES—MUNICIPAL ACT, R.S.O. 1914, CH. 192, SEC. 53 (1) (s), 242 (1), AND FORM 2—DECLARATION OF QUALIFICATION—ISSUE OF WARRANT FOR NEW ELECTION—MOTION FOR INJUNCTION. *Kennedy v. Dickson*, 7 O.W.N. 769.

(§ IV-94)—TRIAL—PROCEDURE.

Where a charge involves disqualification of the municipal councillor whose election is contested, it should be proved beyond a reasonable doubt to warrant a finding adverse to him. [Per Russell and Graham, JJ.]

Cameron v. Beaton, 21 D.L.R. 386, 48 N.S.R. 353.

(§ IV-94)—PROCEDURE—PETITION—NOTICE.

It is not a good preliminary objection to an election petition under the Controverted Elections Act, Man., that the returning officer had failed to publish the notice required by sec. 21, where the petitioner had not been required by the returning officer to pay the cost of publication, nor had he been notified of the amount required. [For earlier decisions see 19 D.L.R. 478, 796.]

Re Kildonan and St. Andrews Election, 21 D.L.R. 389, 25 Man. L.R. 336, 7 W.W.R. 1408, 30 W.L.R. 623.

[Affirmed in 23 D.L.R. 887.]

(§ IV-94)—CONTESTS—PROCEDURE—DEFECTIVE PETITION—FAILURE TO PUBLISH NOTICE.

[*Re Kildonan and St. Andrews Election*, 21 D.L.R. 389, 25 Man. L.R. 336, affirmed.]

Re Kildonan & St. Andrews Election, 23 D.L.R. 887, 25 Man. L.R. 340.

(§ IV-95)—SECURITY—CASH DEPOSIT—SUFFICIENCY.

The receipt of the prothonotary for the deposit of \$1,000 accompanying an election petition under the Manitoba Controverted Elections Act is evidence of its sufficiency (sec. 20) in answer to a preliminary objection, and throws upon the respondent the onus of shewing that the deposit was not made in bills of a chartered bank (sec. 19).

Re Lakeside Provincial Election; *Tidebury v. Garland*, 23 D.L.R. 411, 25 Man. L.R. 197, 8 W.W.R. 33, affirming 20 D.L.R. 286.

(§ IV-95)—SECURITY—PARLIAMENTARY ELECTIONS—CONTROVERTED ELECTION PETITION—MONEY PAID INTO COURT AS SECURITY—PETITION NOT BROUGHT TO TRIAL—PAYMENT OUT—CONSENT OF RESPONDENT.

Crawford v. Truax, 9 O.W.N. 15.

ELECTRICITY.

I. MUNICIPAL REGULATIONS OF.

II. CONFLICTING RIGHTS OF DIFFERENT COMPANIES.

III. INJURIES RESULTING FROM.

- A. Negligence of party producing.
- B. Contributory negligence of person injured.

IV. SALE OF ELECTRIC LIGHT AND POWER.

Right to maintain poles and wires in highway, see Highways; Street Railways.

Powers of municipalities as to electric lighting, see Municipal Corporations.

Liability for injuries to employees, see Master and Servant.

Injuries from electricity in general, see Negligence; Street Railways.

I. Municipal regulations of.**II. Conflicting rights of different companies.**

(See previous Annual Digests.)

III. Injuries resulting from.**A. NEGLIGENCE OF PARTY PRODUCING.****(§ III A—16)—FALL OF TREE BRANCH ON ELECTRIC WIRE—FORTUITOUS EVENT.**

The fall of the branch of a tree upon electric wires, the branch being twelve feet long and situated at a right angle sixteen feet from the pole supporting the wires, in consequence of a strong wind, is a fortuitous event which could not have been foreseen.

Quebec R.L.H. & P. Co. v. Vandry, 24 Que. K.B. 214.

[Reversed by Can. Sup. Ct., March 3, 1916.]

(§ III A—24) — INJURY TO EMPLOYEES OF THIRD PERSON—LIABILITY.

An electric light company whose wires are constructed under municipal authority and are carried 29 feet above the surface, even if originally not insulated, owes no duty of safety to workmen of a telegraph company operating on poles erected in dangerous proximity to the high-tension wires, and cannot, therefore, be held liable for injuries resulting to them from contact with such wires. [Roberts v. Bell Telephone, 10 D.L.R. 459, applied.]

Young v. Brandon, 25 D.L.R. 296, 9 W.W.R. 914, reversing 9 W.W.R. 62, 32 W.L.R. 231.

IV. Sale of electric light and power.**(§ IV—40)—CONTRACTS—SUPPLY OF ELECTRIC CURRENT—MODIFICATION OF CONTRACT—PAYMENT FOR CURRENT SUPPLIED—QUANTUM MERUIT—ACCOUNT—ITEMS—CLAIM FOR DAMAGES FOR DECEIT—COSTS.**

Erindale Power Co. v. Interurban Electric Co. (No. 1), 9 O.W.N. 23.

ELECTRIC RAILWAYS.

See Street Railways; Carriers; Railways.

ELEVATORS.

Injuries on, see Negligence.

Injuries to employees on, see Master and Servant.

EMBEZZLEMENT.

See Theft.

Misapplication of corporate funds, see Corporations and Companies.

EMINENT DOMAIN.**I. RIGHT TO TAKE PROPERTY.**

- A. In general.
- B. Who may exercise.
- C. What may be taken.
- D. For what purpose.
- E. Right acquired.

II. PROCEDURE.

- A. In general.
- B. Petition.
- C. Trial; award.
- D. Appeal; new trial.

III. RIGHTS AND REMEDIES OF OWNERS.

- A. In general.
- B. What constitutes a taking of, or injury to, property.
- C. Right to compensation.
- D. Payment or security; taking possession of property.
- E. Consequential injuries.

IV. ADDITIONAL SERVITUDE.

- A. In general; on railroad way.
- B. On highway.

Measure of damages or compensation in expropriation proceedings, see Damages, III.; for awards, see Arbitration.

Power of Court to determine necessity for expropriating land, see Courts; Review of expropriation, see Appeal.

I. Right to take property.**C. WHAT MAY BE TAKEN.****(§ I C—15)—GRAVEL LANDS—NEED OF SURVEYS.**

Gravel land which is required by a railway company for obtaining construction material and the right of way for a spur line to take it out may be expropriated under sec. 180 of the Railway Act, without any plans being submitted to the Railway Commission; no deposit of plans is required as would be necessary were the land required for a right of way for its line, but a certified copy of the surveyor's plan is to be served upon the property owner as well as the notice to treat. [Sask. Land & Homestead Co. v. C. & E. R. Co., 14 D.L.R. 193, 6 A.L.R. 471, affirmed.]

Sask. Land & Homestead Co. v. Calgary & Edmonton R. Co., 21 D.L.R. 172, 51 Can. S.C.R. 1, 8 W.W.R. 312, 19 Can. Ry. Cas. 126.

(§ I C 1—16)—LANDS DEDICATED TO PUBLIC USE.

Lands dedicated to a public use under a provincial statute may be expropriated under the Railway Act for railway purposes.

Lachine, Jacques Cartier & M.R. Co. v. Montreal Gas Co., 18 Can. Ry. Cas. 438.

(§ I C 2—30)—LANDS OF PROVINCIAL RAILWAY.

Section 176 of the Railway Act does not

authorize the taking of lands of a provincial railway company; and the settled practice of the Board accords with this view.

Lachine, Jacques Cartier & M. R. Co. v. Montreal Tramways, etc., 18 Can. Ry. Cas. 133.

(§ I C 2—32)—LANDS OF PROVINCIAL RAILWAY—CROSSINGS.

When application is made under sec. 159 of the Railway Act for the approval of a location plan of a Dominion railway crossing lands of a provincial railway company, the Board must first determine in each case whether expropriation of the required lands of the provincial railway should be authorized, since the order of approval carries with it the right of expropriation of such lands within the limits set out in sec. 177 of the Act. [Preston & Berlin Street R. Co. v. G.T.R. Co., 6 Can. Ry. Cas. 142; St. John & Quebec R. Co. v. C.P.R. Co., 14 Can. Ry. Cas. 360; Toronto v. Bell Telephone Co., [1905] A.C. 52; Atty-Gen. for B.C. v. C.P.R. Co., [1906] A.C. 204, followed; Atty-Gen. for Alberta v. Atty-Gen. for Canada, 31 T.L.R. 32, referred to.]

Lachine, Jacques Cartier & M. R. Co. v. Montreal Tramways, etc., 18 Can. Ry. Cas. 133.

D. FOR WHAT PURPOSE.

(§ I D 2—58)—SPURS OR BRANCH LINES—LANDS OWNED BY APPLICANT FOR SPUR—COMPENSATION.

Section 225 of the Railway Act applies to spurs or branch lines ordered under sec. 226 as well as to branch lines authorized under sec. 222. The lands necessary for a spur constructed under sec. 226 are, therefore, to be acquired by agreement or expropriation in the same manner as lands for other railway purposes. Consequently, where lands so required are owned by the applicant for the spur, and the applicant has not been compensated for them in accordance with the Act, they do not become vested in the railway company by the mere operation of sec. 226, sub-sec. 5, upon refund of the cost of the spur by means of rebates. [Boland v. G.T.R. Co., 18 Can. Ry. Cas. 60, followed.]

Standard Crushed Stone Co. v. G.T.R. Co., 18 Can. Ry. Cas. 374.

(§ I D 2—58)—INDUSTRIAL SPUR—SCOPE OF RIGHT—POWERS OF BOARD.

When the order of the Board authorizing the construction and operation of an industrial spur provides that the respondent should retain the ownership of the right-of-way on which the siding is located, the Board can only authorize the applicant to take expropriation proceedings to enable it to acquire the right-of-way across the lands of the respondent so as to reach by an extension of the spur another industry which it desires to serve.

Grand Trunk R. Co. v. Hamilton & Toronto Sewer Pipe Co., 18 Can. Ry. Cas. 369.

II. Procedure.

A. IN GENERAL.

(§ II A—80)—EXPROPRIATION FOR RAILWAY—RETROACTIVENESS OF STATUTE.

By the Quebec Act of 1912, 3 Geo. V. ch. 42, the arbitration in the matter of expropriation by railway companies is abolished and replaced by an *enquête* before a Judge of the Superior Court, but this Act has no retroactive effect, and does not apply to an arbitration started before December 21, 1912, the date on which the Act was brought into force.

Girard v. Ha-Ha-Baie, 47 Que. S.C. 325.

(§ II A—80)—SPECIAL STATUTORY PROCEDURE—ARBITRATION.

In railway expropriations the parties have a right to refuse to take proceedings under the special statutes passed for this purpose and to agree to an ordinary, voluntary and conventional arbitration, these acts not being of public order.

Girard v. Ha-Ha-Baie, 47 Que. S.C. 325.

III. Rights and remedies of owners.

C. RIGHT TO COMPENSATION.

(§ III C—135)—VALUES.

Special adaptability is nothing more than an element of market value in expropriation cases; the compensation to be awarded for the property taken is to be fixed as if the scheme under which the compulsory powers are exercised had no existence. [Cedars Rapids v. Lacoste, 16 D.L.R. 168, [1914] A.C. 569; Cunard v. The King, 43 Can. S.C.R. 99, and Sydney v. North Eastern R. Co., [1914] 3 K.B. 629, referred to; The King v. Macpherson, 15 Can. Ex. 215, followed.]

The King v. Wilson, 22 D.L.R. 585, 15 Can. Ex. 283.

(§ III C—135)—EXPROPRIATION OF WATER-LOT—VALUES—SPECULATIVE BENEFITS.

Where there is no evidence of market value to guide the Exchequer Court in assessing compensation for a water-lot expropriated for public purposes under the Expropriation Act, Can., the compensation will not be granted with reference to a hope or expectation as to the use of the property which cannot be regarded as a right of property in the claimant, *ex. gr.* the expectation of the owner of a water-lot in a public harbour being able to obtain the requisite permission by order-in-council to place erections thereon under R.S.C. 1906, ch. 115. [Corrie v. Mac Dermott, [1914] A.C. 1056, and May v. Boston, 158 Mass. 21, referred to.]

The King v. Wilson, 22 D.L.R. 585, 15 Can. Ex. 283.

(§ III C—135)—EXPROPRIATION BY CROWN—ABANDONMENT.

Upon a fair construction of the language of the Expropriation Act, sec. 23, sub-sec. 4, the jurisdiction of the Court is not limited to claims arising out of a partial abandonment of the property, but extends to claims for total abandonment as well. Upon ex-

propriation proceedings being taken it is the intentment of the above enactment, so that actions be not multiplied, that the damages are to be assessed once for all in such proceedings, but where the Crown, before judgment, returns the property to the owner, and discontinues the action, so that the damages are prevented from being assessed at all therein, then the owner of the property has a remedy by petition of right under the jurisdiction clauses (secs. 19 and 20) of the Exchequer Court Act. Where the surrounding properties had been temporarily enhanced in value by reason of a projected Government work subsequently abandoned, the owner of property, no part of which had been taken, has no claim to compensation because of the abandonment by the Government of the proposed scheme. On the other hand, where property has been taken and returned, all damages arising out of any interference with the owner's rights in respect of leasing the lands during the period of expropriation was effective is a proper subject of compensation. For the purposes of a projected public work the Crown expropriated a market place and demolished the buildings thereon in the vicinity of suppliants' property. The Crown had also expropriated the suppliants' property which it subsequently returned to the suppliants.—Held, that suppliants had no right to damages for any depreciation in the value of their property arising from the destruction of the market, as any loss arising to the suppliants was suffered by them in common with the other property owners in the neighbourhood. [The Queen v. Murray, 5 Can. Ex. 69; Cedar Rapids Power Co. v. Lacoste, [1914] A.C. 569, referred to.]

Gibb v. The King, 15 Can. Ex. 157, 51 C.L.J. 66.

(§ III C—135) — RAILWAYS—EXPROPRIATION OF LAND—AGREEMENT WITH OWNER AS TO COMPENSATION—MEANING OF "COMPENSATION" IN SEC. 210 OF RAILWAY ACT, R.S.C. 1906, CH. 37—PAYMENT INTO COURT—COLLATERAL AGREEMENT—FARM CROSSINGS—DRAINAGE—BOARD OF RAILWAY COMMISSIONERS.

Re Campbellford L.O. & W. R. Co. and Buckley, 9 O.W.N. 105.

(§ III C 1—140)—RAILWAY TAKING GRAVEL LAND.

Compensation for a gravel pit and the right of way thereto taken by a railway company under sec. 180 of the Railway Act, R.S.C. 1906, ch. 37, to obtain a supply of material for construction purposes, is to be made as of the time when the company took possession of the land under Judge's order or as of the service of the notice to treat, and not on the basis of values some years later when the arbitration took place. [Sask. L. & H. Co. v. C. & E. R. Co., 14 D.L.R. 193, 6 A.L.R. 471, affirmed.]

Sask. Land & Homestead Co. v. Calgary & Edmonton R. Co., 21 D.L.R. 172, 51 Can. S.C.R. 1, 8 W.W.R. 312, 19 Can. Ry. Cas. 126.

(§ III C 1—143)—DIVERSION OF HIGHWAY—COMPENSATION TO ABUTTING OWNERS.

Where a municipal by-law closes a portion of the width of a highway required for the construction of a railway, and does not merely authorize the railway company to construct the railway along the street, a property owner whose access to his property abutting upon such highway is thereby interfered with is entitled to compensation from the municipality as for damages occasioned by "altering" the highway under the Municipal Act, R.S.B.C. 1911, ch. 170, sec. 52, sub-sec. 176. [Baskerville v. Ottawa, 20 A.R. (Ont.) 108; Re Tate and Toronto, 10 O.L.R. 661; Re Medler and Toronto, 4 Can. Ry. Cas. 13, referred to.]

Ramsay v. West Vancouver, 22 D.L.R. 826, 8 W.W.R. 835, 31 W.L.R. 415.

(§ III C 1—146)—LAND TAKEN FOR HIGHWAYS—COMPENSATION—WHEN FIXED.

The Rural Municipalities Act, ch. 3, sec. 196, sub-sec. 5, 1911-12, does not contemplate the fixing of compensation and damage for lands taken for highways, before the actual taking of such lands by the municipality. [Blomfield v. Mun. of Starland, 21 D.L.R. 859, 31 W.L.R. 573, affirmed.]

Blomfield v. Rural Mun. of Starland, 25 D.L.R. 43, 9 W.W.R. 552, 32 W.L.R. 905.

(§ III C 1—146) — OPENING AND CLOSING STREETS—LANDS INJURIOUSLY AFFECTED—REMEDY BY ARBITRATION.

Upon the location plan being approved by the Board and an agreement made with the respondent municipality, that if the respondent closed certain streets and opened others, the applicant would pay compensation to any one whose lands were injuriously affected; the remedy of the property owners is against the respondent recoverable by arbitration proceedings under the Municipal Act, and the applicant is responsible to the respondent for the amount of compensation awarded.

Canadian Northern R. Co. v. North Bay, 18 Can. Ry. Cas. 309.

(§ III C 1—148) — RAILWAY PURPOSES — VALUATION.

On the expropriation of land for railway purposes the value to be paid is the value to the owner as it existed at the date of the taking, and not the value to the taker; such value is the present value alone of the advantages which the land possesses whether present or future. [Cedars Rapids v. Lacoste, 16 D.L.R. 168, [1914] A.C. 569; R. v. Trudel, 19 D.L.R. 270, 49 Can. S.C.R. 511, followed.]

Green v. C.N.R. Co., 22 D.L.R. 15, 8 S.L.R. 53, 7 W.W.R. 1072, 19 Can. Ry. Cas. 139.

(§ III C 2—150)—LIFE TENANT AND REMAINDERMAN.

A ten per cent. allowance for compulsory taking in eminent domain proceedings is really a part of the value, and is to be similarly treated as between a tenant for life

and a remainderman; it is error to direct the ten per cent. to be paid to the life tenant.

O'Mullin v. Eastern Trust Co., 21 D.L.R. 375, 48 N.S.R. 219.

(§ III C 2—150)—LIFE TENANT AND REMAINDERMAN.

Apart from any damage to the tenant for life in respect to inconvenience or injury independently of the value of the property, the compensation awarded in eminent domain proceedings is to be held for the remainderman, and the interest only on the fund paid to the tenant for life where by the terms of the trust the property was not to be sold until the latter's death. [Smith v. G.N.R. Co., 23 W.R. 126; Leedham v. Chawner, 4 K. & J. 458, applied; Young v. Midland R. Co., 19 A.R. (Ont.) 265, 281, referred to.]

O'Mullin v. Eastern Trust Co., 21 D.L.R. 375, 48 N.S.R. 219.

(§ III C 2—150) — DETERMINATION OF OWNERSHIP.

The proper practice in expropriation proceedings is to have the title settled before the assessment of damages, so that it will be certain that the arbitrator has the right claimants before him and the compensation may be properly fixed.

Miller v. Halifax Power Co., 24 D.L.R. 29, 48 N.S.R. 370.

(§ III C 2—150)—RIGHT OF DEVISEE.

No right to compensation in expropriation proceedings exists in respect of the privilege conferred on other members of the testator's family under a devise of a farm to a son expressed in the following terms: "for his own use subject to the right of the rest of my family to use the same for the summer as heretofore as I know he will allow them to do;" the privilege referred to is to be construed as existing only so long as the devisee remained in occupation and was the owner, and could not be claimed to the detriment of the fee. [Dougherty v. Carson, 7 Gr. 31, followed.]

The King v. Taylor, 22 D.L.R. 473, 15 Can. Ex. 209.

(§ III C 2—157)—LANDLORD AND TENANT.

Where land expropriated by a railway company is subject to a lease separate amounts should be awarded to both landlord and tenant. [Johnson v. Ont. Simcoe & Huron R. Co., 11 U.C.Q.B. 246, referred to.] Quaere as to whether a tenant has a right to have his compensation ascertained by a separate award by a different board of arbitrators. It is contrary to sound construction to permit the use of a term not altogether apt to defeat the intention of the Legislature, which must not be assumed to have foreseen every result that may accrue from the use of a particular word. [Regina Trustees v. Gratton Trustees, 7 W.W.R. 1248, referred to.]

Pacific Great East. R. Co. v. Larsen, 8 W.W.R. 1.

D. PAYMENT OR SECURITY; TAKING POSSESSION OF PROPERTY.

(§ III D—163) — COMPENSATION WHEN AWARDED—DEPOSIT OF PLAN—NOTICE.

The word "title" employed in art. 192 (2) of ch. 37, R.S. 1906, as amended by 8-9 Edw. VII. 1909, ch. 32, is equivalent to the word "right" and "effectively acquire a title under the terms of said statutes, to the lands which a company requires for its works" means acquiring a right which prevents the proprietor from disposing of his property. If an expropriating company has, within the year of the deposit of the plans and book of reference, served on the interested parties the notice mentioned in par. a. and b. of art. 193, ch. 37, R.S. 1906, the arbitrators must determine the compensation with reference to the date of such deposit, even if their award is made only after the expiry of the year from such deposit.

Forget v. Lachine, etc., R. Co., 24 Que. K.B. 174.

E. CONSEQUENTIAL INJURIES.

(§ III E 1—165) — LAND INJURIOUSLY AFFECTED—INTEREST.

Where one parcel of land is expropriated for railway purposes and another parcel of land of the same owner is injuriously affected by the carrying out of such purposes, the amounts awarded in arbitration proceedings in respect to both subjects are to be treated as purchase money. [Re MacPherson and City of Toronto, 26 O.R. 558, and Re Davies & James Bay R. Co., 20 O.L.R. 534, followed.] Arbitrators may award interest on purchase moneys from the date of the service of the notice of expropriation.

Green v. C.N.R. Co., 8 S.L.R. 255, 9 W.W.R. 907.

(§ III E 4—186)—CONSTRUCTION OF SUBWAY—COMPENSATION TO ABUTTING OWNER.

The construction of a subway in pursuance of an order-in-council under secs. 178 and 179 of the Railway Act, R.S.N.S. 1900, ch. 99, required for the public safety to carry a highway under a railway, entitles an abutting property owner to recover, from the company executing the work, compensation for the value of his land injuriously affected thereby though the land itself is not actually taken. [Parkdale v. West, 12 A.C. 602, followed; Burt v. Sydney, 15 D.L.R. 429, 50 Can. S.C.R. 6, 16 D.L.R. 853, applied.]

Burt v. Dominion Steel & Iron Co., 25 D.L.R. 252.

[Leave to appeal to Privy Council granted, 26 D.L.R. 154.]

IV. Additional servitude.
(See previous Annual Digests.)

EMPLOYEES.

Bonds for fidelity of, see Bonds, II.

Rights and duties of, liabilities for injuries to, see Master and Servant.

EMPLOYER'S LIABILITY.

Generally, see Master and Servant.

Insurance against, see Insurance, VIII.

As to workmen's compensation, see Master and Servant, V.

ENACTMENT.

Of municipal by-law, see Municipal Corporations, II.

Of statute, see Statutes, I.

Of company by-law, see Corporations and Companies.

ENCROACHMENT.

As to boundaries generally, see Boundaries.

Building lines, see Buildings.

ENFORCEMENT.

Of mortgage, see Mortgage; Chattel Mortgage.

Of contracts, see Specific Performance.

Of judgment, see Judgment, VI; Execution.

Of awards generally, see Arbitration.

Of award in expropriation proceedings, see Eminent Domain; Damages, III L.

ENGINEERS.

Railway engineers, see Carriers; Railways.

Engineers on vessels, see Shipping; Salvage; Seamen; Admiralty.

EQUITABLE ASSIGNMENT.

See Assignment, II.

EQUITY.

I. JURISDICTION.

II. TRANSFERS BETWEEN LAW AND EQUITY.

III. EQUITY PRINCIPLES.

A. In general.

B. Coming into equity with clean hands.

Relief against forfeiture in, see Forfeiture.

Allegations for equitable relief, see Pleading.

Power to control discretion of trustee, see Trusts.

Rescission of contracts, see Vendor and Purchaser; Contracts.

Equitable principles, see Estoppel; Equitable Assignment; Contribution; Subrogation.

Annotation.

Fusion with law; Pleading: 10 D.L.R. 503.

I. Jurisdiction.

(§ I A—1)—EQUITABLE DEFENCES.

In an action in the King's Bench Division the presiding Judge has, under sec. 18 of the Judicature Act, 1909, all the power and may exercise all the jurisdiction and apply all the procedure of the Chancery Division necessary to afford every kind of equitable relief claimed or appearing incidentally in the course of the proceeding, but if a defendant raises an equitable defence, he is bound by the equitable principles applic-

able to the circumstances of the case in their entirety.

Duffy v. Duffy, 43 N.B.R. 555.

II. Transfers between law and equity.

III. Equity principles.

(See previous Annual Digests.)

ESCROW.

Delivery in escrow, see Contracts; Deeds.

ESTATES.

In real property, generally, see Deeds, II; Wills, III.

Of dower, see Dower.

Titles relating to, see Land Titles; Vendor and Purchaser.

ESTOPPEL.

I. OF MUNICIPALITY OR OF CROWN.

A. Of municipality.

B. Of Crown.

II. BY DEED OR RECORD.

A. By deed.

B. By bond or mortgage.

C. By record.

III. EQUITABLE ESTOPPEL OR ESTOPPEL IN PAIS.

A. In general; effect.

B. Of married women.

C. As to corporate existence of powers.

D. By contracts or agreements generally; ratification.

E. By conduct, request or admissions generally.

F. By assent.

G. By laches, silence or acquiescence.

H. By representations.

I. By negligence or fraud.

J. By inconsistency in acts, claims, etc.

K. By receiving benefits.

L. By character or relation of parties.

M. Who affected.

N. Who may be set up.

Annotation.

Ratification of agency; Holding out as ostensible agent: 1 D.L.R. 149.

Estoppel by conduct; Fraud of agent or employee: 21 D.L.R. 13.

I. Of municipality or of Crown.

(See previous Annual Digests.)

II. By deed or record.

A. BY DEED.

(§ II A—26) — COVENANTS FOR TITLE — CROWN PATENT.

Estoppel arises against the grantor in a deed or mortgage of land in respect of his covenants for title from denying that he was the owner of the land at the date of the deed or mortgage, although his title at that time was merely that of a locattee prior to the Crown Patent; in such case a subsequent issue of the patent to the grantor or

to his personal representative after his decease feeds the estoppel in favour of the grantee or mortgagee. [Bolter v. Hamilton, 15 U.C.C.P. 125; Doe d. Irvine v. Webster, 2 U.C.Q.B. 224, followed.]

Berard v. Bruneau, 22 D.L.R. 83, 25 Man. L.R. 400, 8 W.W.R. 635.

III. Equitable estoppel or estoppel in pais.

A. IN GENERAL; EFFECT.

(§ III A—41a)—ESSENTIALS OF—CHANGE OF POSITION.

To found an estoppel it must be shewn that the party for whose benefit it is claimed altered his position because of the representation or act of the other.

Bank of Ottawa v. Stamco Ltd. and Bank of B.N.A., 22 D.L.R. 679, 8 W.W.R. 574.

D. BY CONTRACTS.

(§ III D—62)—RECITALS IN BILL OF LADING—WEIGHTS OR QUANTITIES.

Where there is nothing in the bill of lading or shipping bill of the railway to limit its responsibility for the weights or quantities entered on the bill the railway company is estopped from denying that approximately the quantity stated with the addition of the words "more or less" had been received for shipment.

Randall, Gee & Mitchell v. C.N.R. Co., 21 D.L.R. 457, 25 Man. L.R. 293, 8 W.W.R. 413.

E. BY CONDUCT, REQUEST OR ADMISSIONS GENERALLY.

(§ III E—71)—LEADING TO BELIEF APPOINTMENT OF AGENT.

Where one has so acted as from his conduct to lead another to believe that he has appointed someone to act as his agent, and knows that that other person is about to act on that behalf, then, unless he interposes, he will, in general, be estopped from disputing the agency, though in fact no agency really existed. [Pole v. Leask, 33 L.J. Ch. 161, followed.]

Imperial Elevator v. Hillman, 23 D.L.R. 420, 8 S.L.R. 91, 8 W.W.R. 381, 30 W.L.R. 951.

(§ III E—74)—UNAUTHORIZED HYPOTHECATION OF BLANK SHARE CERTIFICATE—FORBEARANCE TO CLAIM IT.

Where the owner of a share certificate endorses it in blank and deposits it with a company as security for an advance, and such company hypothecates it with a bank as collateral security for its own benefit, such hypothecation is a fraud on the owner, and upon payment of his debt to the company he is entitled to a return of the certificate; but where the bank has in good faith made advances to the company on the strength of such security, and the owner, upon learning that the certificate is in the hands of the bank, takes no steps to recover it, he is estopped by conduct from claiming

delivery of the certificate free from encumbrances which he, by his own neglect, has allowed to be created. [Colonial Bank v. Cady, 15 A.C. 267, followed; France v. Clark, 26 Ch.D. 257, distinguished.]

MacDonald v. Bank of Vancouver, 25 D.L.R. 567, 9 W.W.R. 8, 32 W.L.R. 339.

G. BY LACHES, SILENCE OR ACQUIESCENCE.

(§ III G 2—90)—CONTINUING PAYMENTS ON CONTRACT PROCURED BY FRAUD—IGNORANCE OF LEGAL REMEDY.

Continuing payments on a contract for the sale of land procured by fraud, or a delay in rescinding it on that account, does not necessarily amount to such acquiescence as will estop the purchaser from exercising his right of rescission, where all the material facts giving him the right to avoid the contract have not been discovered by the purchaser and where he was in ignorance of his rights as to the proper legal remedy.

Harvey v. Lawrence, 25 D.L.R. 706, 9 W.W.R. 91, 32 W.L.R. 297.

H. BY REPRESENTATIONS.

(§ III H—112)—REPRESENTATIONS BY WIFE AS TO TITLE TO LAND—RELIANCE BY WIFE'S CREDITORS.

Representations made by a wife in respect of her title to land, and acted upon by her creditors, but which is in fact only held by her as trustee for her husband to be re-conveyed to him upon his recovery from an illness, will not create an estoppel against the husband not being himself a party to the representations.

Windsor Auto Sales Agency v. Martin, 25 D.L.R. 549, 33 O.L.R. 354, 80 W.N. 130.

J. BY INCONSISTENCY IN ACTS, CLAIMS, ETC.

(§ III J 2—125)—POSSESSORY TITLES—LANDS HELD IN COMMON—TRESPASSERS.

A tract of land devised by a testator to his sons to be held as tenants in common for their natural life, which had been fenced off and partitioned by them into their respective severalities, does not create an estoppel against trespassers holding such land adversely against the heirs of the reversioner.

Stuart v. Taylor, 22 D.L.R. 282, 33 O.L.R. 20, 7 O.W.N. 551.

(§ III J 3—130)—ACTS IN JUDICIAL PROCEEDINGS—DEPOSING AS PLAINTIFF TO EXAMINATION FOR DISCOVERY.

A person who upon being served with an appointment for examination for discovery appears before the examiner and swears that he is the plaintiff will be estopped from denying after the claim has been dismissed with costs that he was the real plaintiff, where the defendants proceeded to trial on the assumption that he was the plaintiff notwithstanding a slight difference in name.

Barisino v. Curtis & Harvey Ltd., 22 D.L.R. 899, 8 O.W.N. 195.

(§ III J 3—130)—ACTION FOR DESTRUCTION OF TIMBER—SWORN STATEMENT AS TO QUANTITY.

A plaintiff suing a railway company for the value of logs cut in lumbering operations and which had been set fire by sparks from a locomotive of the railway line which ran through the timber limits, will, in the absence of satisfactory evidence of mistake, be held to the statement made in his sworn return to the Government agent of the number of logs destroyed by the fire.

Dutton v. C.N.R. Co., 23 D.L.R. 43, 31 W.L.R. 367, 19 Can. Ry. Cas. 72.

(§ III J 3—130)—WAIVER OF PROCEDURE REGULATIONS — AFFILIATION PROSECUTION.

The provision of sec. 9 of the Illegitimate Children's Act, R.S.M. 1913, ch. 92, that the justice of the peace shall take the information of the mother in affiliation proceedings brought by her or on her behalf is one which concerns procedure only and may be waived as it does not go to the jurisdiction; such waiver operates against the mother to prevent her repudiating the proceedings which were dismissed where the parties went to a hearing on the merits without objection in respect thereof on which the mother attended and gave evidence. [Reg. v. Hughes, 4 Q.B.D. 614; Turner v. Postmaster-General, 5 B. & S. 756; R. v. Doherty, 3 Can. Cr. Cas. 505, referred to.]

Davis v. Feinstein, 24 D.L.R. 798, 24 Can. Cr. Cas. 160, 25 Man. L.R. 507, 8 W.W.R. 1003, 31 W.L.R. 635.

M. WHO AFFECTED.

(§ III M—151)—PRINCIPAL BY AGENT'S FRAUD—OBTAINING FREIGHT BILLS ON PERSONAL CHEQUE.

Where an oil company's local manager or agent in charge of its branch business gave his unmarked personal cheque to a railway for freight charges payable by his employers and thereupon the railway receipted the freight bills as having been paid by the oil company, but without any intention of looking to the personal credit of the local manager or knowledge that the cheque did not represent funds supplied by the oil company for the purpose of paying the freight, no estoppel arises to prevent the railway suing the oil company for the freight charges on the dishonour of the manager's cheque, although the latter had fraudulently utilized the receipted freight bills as vouchers to obtain money from his employer as upon a reimbursement where no knowledge of the latter purpose could be imputed to the railway. [Gentles v. C.P.R. Co., 14 O.L.R. 286, distinguished; People's Bank v. Estey, 34 Can. S.C.R. 452, and Wyatt v. Marquis of Hertford, 3 East 147, referred to.]

Canadian Pacific R. Co. v. Continental Oil Co., 21 D.L.R. 1, 8 A.L.R. 363, 8 W.W.R. 259.

ESTREAT OF BAIL.

See Bail and Recognizance.

EVIDENCE.

I. JUDICIAL NOTICE.

- A. Laws and ordinances.
- B. Proclamation.
- C. Official and judicial character of acts.
- D. Political, historical and geographical matters.
- E. Other matters.
- F. By jury.

II. PRESUMPTIONS AND BURDEN OF PROOF.

- A. In general; laws; ordinances.
- B. Establishing allegations or claims.
- C. Defences.
- D. Exceptions or exemptions.
- E. Concerning person.
- F. Corporations; partnership.
- G. Continuance; cause.
- H. As to skill; negligence; care.
- I. As to official acts.
- J. From circumstances and course of business.
- K. As to rights, contracts, instruments, and property.
- L. Payment; credit.
- M. Miscellaneous.

III. BEST AND SECONDARY EVIDENCE.

IV. DOCUMENTARY EVIDENCE.

- A. Preliminary matters; genuineness and validity.
- B. Statutes; ordinances.
- C. Certificate; award.
- D. Official records, reports and returns.
- E. Judgments and judicial records.
- F. Pleadings and papers in suit.
- G. Evidence previously taken or used; affidavits.
- H. Tax book or list.
- I. Deeds; wills; leases; mortgages.
- J. Accounts and account books.
- K. Letters, telegrams, etc.
- L. Records and papers of corporations or carriers.
- M. Note; indorsement.
- N. Contracts.
- O. Scientific and medical books.
- P. For purposes of comparison.
- Q. Memoranda.
- R. Miscellaneous.
- S. Paper produced on notice.
- T. Putting whole writing in evidence.

V. DEMONSTRATIVE EVIDENCE; ARTICLES AND THINGS; VIEW OF JURY.

VI. PAROL AND EXTRINSIC EVIDENCE CONCERNING WRITINGS.

- A. In general.
- B. Custom, or usage.
- C. Prior and collateral parol agreements.
- D. Subsequent change.
- E. Meaning; intention; explanation.
- F. As to commercial paper.
- G. Consideration, or value of subject-matter.

- H. Fraud; mistake; omissions.
- I. Condition; trust; mortgage.
- J. To identify subject or person.
- K. Circumstances.
- L. Concerning records.
- M. Character of party.

VII. OPINIONS AND CONCLUSIONS.

- A. In general.
- B. Hypothetical questions.
- C. Cause and effect.
- D. Physical conditions; medical testimony; intoxication.
- E. Sanity; capacity; character.
- F. Values; damages.
- G. Contingent results; what might have been.
- H. Legal questions; meaning of terms; foreign laws.
- I. Estimates of quantity; speed; time.
- J. Danger; skill; negligence.
- K. Intent; mental conditions.
- L. Appearance; identity; quality; authenticity.
- M. Handwriting.
- N. Miscellaneous.

VIII. CONFESSIONS; TESTIMONY OR EVIDENCE WRONGFULLY OBTAINED.

IX. ADMISSIONS.

X. HEARSAY, DECLARATION; RES GESTÆ.

- A. In general; pedigree; reputation.
- B. Confidential communications.
- C. Party's own acts and declaration.
- D. Acts and declarations of third persons generally.
- E. Acts and declarations of agent, representative or tenant.
- F. Acts and declarations of former party in interest; testator or former owner.
- G. Acts and declarations of partner; associate or co-conspirator.
- H. Complaints of injuries and suffering.
- I. Threats.
- J. Telephone conversations.
- K. Conversation through interpreter.
- L. Dying declarations, or those made in travail.
- M. Former testimony.

XI. RELEVANCY AND MATERIALITY.

- A. In general.
- B. Custom or habit.
- C. Character; reputation; age.
- D. Knowledge; notice; belief; mental capacity.
- E. Intent; motive; fraud; undue influence; good faith; malice.
- F. Prices; values.
- G. Damages.
- H. Care; skill; negligence.
- I. Suggestive facts; facts supporting inferences.
- J. Circumstances.
- K. Similar acts or facts.
- L. Explanation and rebuttal.
- M. Payment; consideration; credit.
- N. Proof of negative.
- O. Contracts; breach; waiver.

- P. Matters pending suit.
- Q. Pecuniary condition; family circumstances.
- R. Persons; personal relations.
- S. Connecting with subject; matters about other persons.
- T. Criminal matters generally.
- U. Title or possession.
- V. Identification.
- W. Justification; mitigation.
- X. Authority.
- Y. Experiments.
- Z. Miscellaneous.

XII. WEIGHT, EFFECT, AND SUFFICIENCY.

- A. In general; corroboration.
- B. Cause and effect.
- C. Fraud or good faith; malice; undue influence.
- D. Negligence; skill; care.
- E. As to property rights.
- F. Matters as to persons; relation of parties.
- G. To overcome writing, pleading, or judicial proceedings.
- H. Documents generally; official acts or record; demonstrative evidence.
- I. Contracts.
- J. Wills.
- K. Miscellaneous civil cases.
- L. Criminal cases.

XIII. ADMISSIBILITY UNDER PLEADINGS; VARIANCE.

- A. Under particular pleadings.
- B. Variance.

Review on appeal, see Appeal.

As to discovery, see Discovery and Inspection.

New trial for newly discovered or for insufficient evidence, see New Trial.

Instructions upon, see Trial.

Depositions and commissions to take, see Depositions.

Witnesses generally, see Witnesses.

Corroboration of proof of claims against decedents' estates, see Executors and Administrators.

Judicial notice of Intoxicants, see Intoxicating Liquors.

Annotations.

Admissibility; Competency of wife against husband: 17 D.L.R. 721.

Admissibility; Discretion as to commission evidence: 13 D.L.R. 338.

Criminal law; Questioning accused person in custody: 16 D.L.R. 223.

Extrinsic; When admissible against a foreign judgment: 9 D.L.R. 788.

Demonstrative evidence; View of locus in quo in criminal trial: 10 D.L.R. 97.

Meaning of "half" of a lot; Division of irregular lot: 2 D.L.R. 143.

Opinion evidence as to handwriting: 13 D.L.R. 565.

Oral contracts; Statute of Frauds; Effect of admission in pleading: 2 D.L.R. 636.

Proof of alienage: 23 D.L.R. 375, 376.

I. Judicial Notice.

B. PROCLAMATION.

(§ I B—15)—PROCLAIMED RAILWAY ORDERS.

The publication of the orders and general train and interlocking rules under sec. 31 of the Railway Act (Can.) gives them the effect of statutes, of which the Courts are bound to take judicial notice; but the omission to publish them does not necessarily invalidate them, it merely necessitates their proof before the Courts can act on them. [Underhill v. C.N.R. Co., 22 D.L.R. 279, followed; Clark v. C.P.R. Co., 2 D.L.R. 331, 17 B.C.R. 314, distinguished.]

McPhee v. Esquimalt & Nanaimo R. Co., 23 D.L.R. 561, 8 W.W.R. 1319, 32 W.L.R. 125.

E. OTHER MATTERS.

(§ I E—72)—USAGES AND CUSTOMS.

A custom, to have the characteristics intended by law, should be based upon facts uniform, public, many in number and of long duration. When a party sets up as a custom reprehensible facts, the Courts should refuse to entertain them and not permit them to be more publicly known.

Denis Advertising Signs v. Martel Stewart Co., 47 Que. S.C. 266.

II. Presumptions and burden of proof.

H. AS TO SKILL; NEGLIGENCE; CARE.

(§ II H 1—224) — FORTUITOUS ACCIDENT — FORCE MAJEURE.

A fortuitous accident is an unforeseen event caused by a *force majeure* which it is impossible to resist, but it is not presumed and must be proved, and it is the one who invokes it who has the burden of proof.

Dechêne v. C.P.R. Co., 47 Que. S.C. 431.

(§ II H 1—237)—GOODS DAMAGED IN TRANSIT — EXCEPTED RISKS.

When goods are given to a carrier for delivery and arrive at their destination in a damaged state, there arises a presumption of fault on the part of the one who is under an obligation to indemnify the consignee. A clause inserted in a bill of lading providing "That the carriers should not be responsible for any loss, damage or delay arising from the act of God, pilferage, breakage, perils or accidents of the sea, as the entry or admission of water into the vessel for any cause or for any purpose," puts the burden of proof upon the carrier to prove that the damage to the goods arose from one of such causes.

Dechêne v. C.P.R. Co., 47 Que. S.C. 431.

(§ II H 1—250)—NEGLIGENCE OF STREET RAILWAY—INCOMPETENCE OF MOTORMAN.

A finding by the jury in a negligence action against an electric railway company that the defendants were guilty of negligence consisting of the motorman being incompetent of running the car will not in itself be sufficient to render the company liable unless it is proved in evidence and found by the jury

that the incompetence of the motorman resulted in some definite act or omission which was the direct cause of the injury.

Mehner v. Winnipeg Electric Co., 21 D.L.R. 786, 25 Man. L.R. 384, 18 Can. Ry. Cas. 179, 8 W.W.R. 517.

M. MISCELLANEOUS.

(§ II M—363d)—INTESTACY.

The presumption is that a testator intended to dispose of his entire estate and not to die intestate as to the whole or any part thereof. [40 Cyc. 1409, referred to.]

Re Christenson, 21 D.L.R. 354, 7 W.W.R. 1382, 30 W.L.R. 703.

III. Best and secondary evidence.

(See previous Annual Digests.)

IV. Documentary evidence.

C. CERTIFICATE; AWARD.

(§ IV C—401)—CERTIFICATES OF MARRIAGE AND BIRTH.

A certificate of marriage attested by the clerk of a Court in the United States and the certificate of birth by a pastor are *prima facie* evidence of marriage and birth.

Chiniquy v. Begin, 24 D.L.R. 687, 24 Que. K.B. 294, reversing 20 D.L.R. 347, and varying 7 D.L.R. 65.

D. OFFICIAL RECORDS, REPORTS AND RETURNS.

(§ IV D—405)—OFFICIAL RECORDS OF SURETY COMPANY—ADMISSIBILITY IN ACTION ON BOND.

Official books and reports which the official is bound to furnish as one of the duties incidental to his office are presumptive evidence against his sureties as such officer in an action under their bond that he should well and truly account for and pay over the moneys coming to his hands in his official capacity. [Abbeylax Guardians v. Sutcliffe, 26 L.R. Ir. 332; Ferrie v. Jones, 8 U.C.Q.B. 192; Middlefield v. Gould, 10 U.C.C.P. 9; Welland v. Brown, 4 Ont. R. 217, referred to.]

Jordan School District v. Gaetz, 23 D.L.R. 739, 8 A.L.R. 433, 8 W.W.R. 658, 32 W.L.R. 202.

(§ IV D—406)—CROWN GRANT—IDENTITY OF PREDECESSOR IN TITLE.

The production on the trial by the plaintiff's solicitor of a grant from the Crown to a person of the same name as the person from whom the plaintiff claims the property granted as heir and devisee of the grantee is sufficient evidence of the identity of the plaintiff's predecessor in title with the grantee to sustain a verdict for the plaintiff in an action for the land.

Simpson v. Malcolm, 43 N.B.R. 79.

E. JUDGMENTS AND JUDICIAL RECORDS.

(§ IV E—410)—DIVISION COURT—RECORD OF APPEAL CASE—EVIDENCE.

Where a case in a Division Court is appeal-

able under sec. 125 (a) of the Division Courts Act, R.S.O. 1914, ch. 63, the Judge is to take down the evidence in writing, and where stenographic notes are not taken, the Judge should take down the depositions at least as fully as is customary on examinations taken in longhand before a Master; mere notes of such part of the evidence as the Judge thought fit to take do not satisfy the requirements of the statute. [Smith v. Boothman, 9 D.L.R. 450, 4 O.W.N. 801, followed.]

Barrett v. Phillips, 21 D.L.R. 710, 33 O.L.R. 203, 8 O.W.N. 2.

[See also 25 D.L.R. 240, 34 O.L.R. 586.]

F. PLEADINGS AND PAPERS IN SUIT.

(§ IV F—415)—LEAVE TO PUT IN DOCUMENTS OMITTED AT TRIAL.

Walsh, J., granted the plaintiff's counsel leave (on terms) to put in as evidence a document he failed by an oversight to put in at the trial.

Peirson v. Crystal Ice Co., 32 W.L.R. 910.

G. EVIDENCE PREVIOUSLY TAKEN OR USED; AFFIDAVITS.

(§ IV G—423)—AFFIDAVITS OF VALUE PREVIOUSLY TAKEN.

The affidavit of value made by the executor of an estate on taking out probate may be admissible in evidence against the estate on an arbitration to fix the value of some of the lands belonging to the estate expropriated for railway purposes; the arbitrators should consider whether the time which had elapsed between the affidavit of value and the date as of which compensation was to be paid by the railway was such as to make the affidavit of little or no importance in fixing the value of the property at a later date. [New v. Hunting, [1897] 1 Q.B. 607, referred to.]

Canadian North. West. R. Co. v. Moore, 23 D.L.R. 646, 8 A.L.R. 379, 7 W.W.R. 1327, 30 W.L.R. 676.

K. LETTERS, TELEGRAMS, ETC.

(§ IV K—441)—ADMISSIBILITY OF LETTER.

Marking a letter with the words "without prejudice," does not necessarily exclude it from being given in evidence against the writer; the letter is to be excluded if the writer is in dispute or negotiation with another and is offering terms without prejudice for the settlement of the dispute or negotiation, but to determine whether these conditions exist the trial Judge may look at the letter marked "without prejudice." [Re Daintrey, [1893] 2 Q.B. 119, distinguished.]

Bank of Ottawa v. Stamco Ltd. & Bank of B.N.A., 22 D.L.R. 679, 8 W.W.R. 574.

L. RECORDS AND PAPERS OF CORPORATIONS OR CARRIERS.

§ IV L—450)—FOREIGN COMPANY—EVI-

DENCE OF INCORPORATION—JURISDICTION OF COUNTY COURT.

In an action in a magistrate's Court by a foreign corporation the only evidence of the incorporation was supplementary letters of incorporation increasing the capital stock. This evidence was received by the magistrate without objection and a judgment entered for the plaintiff. On review before a County Court Judge the judgment was set aside on the ground that there was no evidence of incorporation. Held, on motion for a certiorari to quash the order of review, that, whether, or not, there is such evidence is a question of law and the County Court Judge had jurisdiction, notwithstanding the amount involved was under \$40.

Ex parte Ault & Wiborg Co. of Canada, Ltd., 42 N.B.R. 548.

V. Demonstrative evidence; articles and things; view of jury.

(See previous Annual Digests.)

VI. Parol and extrinsic evidence concerning writings.

A. IN GENERAL.

(§ VI A—515)—INDEFINITE DESCRIPTION OF LAND—STATUTE OF FRAUDS.

Parol evidence is admissible to establish the legal description of land otherwise indefinite under the requirements of the Statute of Frauds. [Caisley v. Stewart, 21 Man. L.R. 341, followed.]

Williams v. Black, 23 D.L.R. 287, 8 W.W.R. 1139, 31 W.L.R. 844.

(§ VI A—515)—ADMISSIBILITY OF ORAL EVIDENCE—QUEBEC PRACTICE.

An admission by the Crown, in its plea to a petition of right, claiming commission on an option obtained for the Crown; that the option was obtained by the suppliant, and that while some remuneration should be paid it had not been fixed, and that the claim was excessive, is a "commencement of proof in writing" which will, under Quebec law, let in oral evidence under art. 1233 C.C.P.

Wright v. The King, 22 D.L.R. 269, 15 Can. Ex. 203.

(§ VI A—515)—COMMENCEMENT OF PROOF IN WRITING—ADMISSIBILITY OF ORAL EVIDENCE.

The admission may be divided when the part contested and opposed is improbable or met by evidence of bad faith. This is the position when a defendant sued for loan of money pleads that the plaintiff did not advance this money by that title, but it was in order to pay the cost of a construction, the ownership of which was to be in common, and it is established that the defendant had tried to sell this immoveable as his own and had even mortgaged it. These latter facts separated from the admission furnish a commencement of proof in

writing which admits of the production of oral testimony.

Hébert v. Demers, 47 Que. S.C. 252.

(§ VI A—515)—**CONTRACTS—CONDITION NOT EXPRESSED IN WRITTEN AGREEMENT—ORAL EVIDENCE OF CONDITION—INOPERATIVE AGREEMENT—PRINCIPAL AND AGENT—SALES OF LAND MADE BY AGENT NOT ASSENTED TO BY PRINCIPAL—COMMISSION.**
Rimand v. Lines, 8 O.W.N. 464.

C. PRIOR AND COLLATERAL PAROL AGREEMENTS.

(§ VI C—525)—**SALE OF GOODS—COLLATERAL AGREEMENT—ADMISSIBILITY.**

A verbal agreement made concurrently with a sale of goods but not referred to in the written order, that the vendor's representative would, in consideration of the sale, assist the buyer in demonstrating and retailing the goods is a collateral agreement of which oral evidence is admissible where it does not contradict the writing, and the buyer may set up a claim for damages for the breach of such collateral agreement by way of counterclaim to an action for the price.

Jeffress v. MacKinnon, 23 D.L.R. 151.

(§ VI C—525) — **PROMISSORY NOTE — CONTEMPORANEOUS PAROL AGREEMENT.**

Where a promissory note is given for shares of stock in furtherance of a plan to erect tanks for the supply of oil, a contemporaneous verbal agreement for the return of the note upon the failure to erect such tanks is inadmissible to disprove liability thereon in an action by the maker for the replevy of the instrument.

Wilton v. Manitoba Independent Oil, 25 D.L.R. 243, 9 W.W.R. 202, 32 W.L.R. 465, 25 Man. L.R. 628.

E. MEANING; INTENTION; EXPLANATION.

(§ VI E—535)—**MEANING OF CONTRACT.**

Although oral evidence cannot be admitted against a writing, proof of attendant facts and circumstances may be made by witness to shew that the real contract entered into differs from that which the writing purports to have disclosed.

Rainboth v. O'Brien, 24 Que. K.B. 88.

(§ VI E—535)—**LEASE AND SPECIFICATIONS—CONTRADICTIONS.**

When from the terms of a lease and of the specifications of certain works there are obvious contradictions as to what the owner undertook to do, these contradictions furnish a commencement of proof sufficient to permit of the admission of oral evidence.

Manion v. Bertrand, 47 Que. S.C. 270.

(§ VI E—537) — **CONTRACT WITH RAILWAY — MEANING OF "RIGHT OF WAY CLEARING."**

A contract in writing made for clearing the right of way of a railway contained a clause under which the plaintiff agreed to do and complete all the right of way, clearing between stations 490 and 714 in con-

formity with the specifications annexed, for \$30 per acre. Held, that extrinsic evidence was properly admitted to shew that amongst railway contractors and in railway construction work the words "right of way clearing" had acquired a special and technical meaning, and applied only to land requiring to be cleared and not to the full area of the right of way.

Laine v. Kennedy, 43 N.B.R. 173.

F. AS TO COMMERCIAL PAPER.

(§ VI F—541)—**CONDITIONAL ACCEPTANCE OF BILL OF EXCHANGE.**

Parol evidence is admissible to shew, as against a bank standing in the position of holder with notice, that the acceptance of a bill of exchange rested upon a consideration that the acceptors are not to be liable unless they were at its maturity indebted to the drawers.

Standard Bank of Canada v. Wettlaufer, 23 D.L.R. 507, 33 O.L.R. 441, 8 O.W.N. 187.

G. CONSIDERATION OR VALUE OF SUBJECT-MATTER.

(§ VI G—553)—**CONSIDERATION OF DEED — ASSUMPTION OF MORTGAGES.**

A deed of conveyance setting forth the consideration as "an exchange of lands and one dollar," subject to certain mortgages, "the assumption of which is part of the consideration herein," without further description of the incumbrances in the habendum, and no express covenant assuming the payment of them, is not a case of such precise expression of consideration as would preclude the admission of parol evidence to explain the full extent and nature of the transaction. [*Mills v. United, etc., Bank*, [1912] 1 Ch. 231; *Rex v. Inhabitants*, 2 B. & Ad. 616, referred to.]

Campbell v. Douglas, 25 D.L.R. 436, 34 O.L.R. 580, 9 O.W.N. 148.

H. FRAUD; MISTAKE; OMISSIONS.

(§ VI H—560)—**FRAUD OR MISTAKE.**

Where fraud, mistake or accident is set up, the rule that parol evidence to modify a written instrument is not admissible is inapplicable to the extent of the facts and circumstances relating to the instrument or portion thereof put in issue by the allegation of fraud, mistake or accident.

Jadis v. Porte, 23 D.L.R. 713, 8 A.L.R. 489, 8 W.W.R. 768, 31 W.L.R. 234.

(§ VI H—561) — **FRAUDULENT REPRESENTATIONS.**

Oral testimony may be allowed to prove the facts and the false representations, especially when the parties have agreed in admitting that the obligation alleged to be incurred is not that stated in the written document.

Meunier v. Laprès, 47 Que. S.C. 470.

(§ VI H—562) — **RESERVATION OF MINERAL RIGHTS—MISTAKE—INTENTION.**

The real intention of parties, or a mistake

as to a reservation of mineral rights in a written agreement for the sale of land, may be shewn by parol evidence in the same action for specific performance of the contract so varied, and this even where the Statute of Frauds is pleaded.

Greig v. Franco-Canadian Mortgage Co., 23 D.L.R. 860, 32 W.L.R. 280, 9 W.W.R. 22.

I. CONDITION; TRUST; MORTGAGE.

(§ VI I—566)—CONDITION OF SHARE SUBSCRIPTION.

Oral testimony cannot be received to establish that subscriptions for shares in the capital stock of a company were made conditionally contrary to the terms of a writing stating that they were made without conditions.

St. Roch Hotel Co. v. Barbeau, 48 Que. S.C. 94.

(§ VI I—567)—TRUSTS.

A trust intended by an instrument purporting to be an assignment absolute on its face may be established by parol evidence.

Shepard v. Bruner, 24 D.L.R. 40, 31 W.L.R. 721, reversing 19 D.L.R. 869.

J. TO IDENTIFY SUBJECT OR PERSON.

(§ VI J—570)—AGREEMENT FOR SALE OF LAND—LACK OF DEFINITE DESCRIPTION IN WRITTEN AGREEMENT — EVIDENCE TO SUPPLEMENT — ADMISSIBILITY — PURCHASER'S BREACH OF CONTRACT—DAMAGES—COSTS.

Brooks v. Fletcher, 9 O.W.N. 335.

(§ VI J—572)—DESCRIPTION OF PARTIES.

A true description of the contracting parties may be established by the admission of extrinsic evidence.

Newberry v. Brown, 23 D.L.R. 627, 8 W.W.R. 1283, 32 W.L.R. 118, affirming 20 D.L.R. 896, 20 B.C.R. 483.

K. CIRCUMSTANCES.

(§ VI K—575)—CIRCUMSTANCES OF SALE — DELIVERY AND PAYMENT.

Oral evidence of the circumstances of a sale, of delivery and of payment can be admitted notwithstanding the signature on the written order.

Trudeau v. Beaudet, 47 Que. S.C. 401.

VII. Opinions and conclusions.

A. IN GENERAL.

(§ VII A—590) — OPINION WITNESSES — STATUTORY LIMITATIONS AS TO NUMBER.

Unless a party brings his own witness within the terms of sec. 10 of the Evidence Act, Alta., and makes him an opinion witness, such witness is not to be counted as one of the three witnesses who may be called upon either side to give opinion evidence merely because the opposite party brought out his opinion on cross-examination; but if the party who called him proceeds to re-

examine in respect of such opinion, the witness is to be counted as his witness giving opinion evidence under the statute.

Canadian North. West. R. Co. v. Moore, 23 D.L.R. 646, 8 A.L.R. 379, 7 W.W.R. 1327, 30 W.L.R. 676.

(§ VII A—590)—OPINION EVIDENCE — APPLICABILITY TO EXPROPRIATION AWARDS.

Sec. 10 of the Evidence Act, Alta., limiting to three the number of witnesses on each side to be called to give opinion evidence applies to an arbitration under the Railway Act, Alta., 1907, ch. 8, to fix compensation for land compulsorily taken.

Canadian North. West. R. Co. v. Moore, 23 D.L.R. 646, 8 A.L.R. 379, 7 W.W.R. 1327, 30 W.L.R. 676.

D. PHYSICAL CONDITIONS; MEDICAL TESTIMONY; INTOXICATION.

(§ VII D—607)—TESTIMONY OF MEDICAL EXPERTS—STATUTORY NUMBER.

Sec. 10 of the Evidence Act, R.S.O. 1914, ch. 76, which prohibits the calling of more than three expert witnesses without leave of the Court, is not violated if in connection with the statutory number of experts there is also given the testimony of the attending physician describing the condition of the injured after the accident and that of the physician who made an examination for insurance, but not being regarded as expert witnesses.

Burrows v. G.T.R. Co., 23 D.L.R. 173, 18 Can. Ry. Cas. 183, 34 O.L.R. 142, 8 O.W.N. 459.

(§ VII D—607) — VERIFICATION OF MORTUARY TABLES—QUANTUM VALEAT.

If a witness called can verify a mortuary table produced in evidence as one in actual use by a company dealing in that class of business, it is not necessary that he should possess knowledge sufficient to enable him to explain the basis on which the table was prepared or to give an opinion worth something as to its reliability or correctness in order to render his evidence, quantum valeat, admissible.

Jackson v. C.P.R. Co., 9 W.W.R. 649, affirming 24 D.L.R. 380, 8 W.W.R. 1043, 31 W.L.R. 726.

(§ VII D—609)—OPINIONS OF VETERINARY SURGEONS—CAUSE OF DEATH OF FOXES.

The defendant, to establish its defence that the foxes died from natural causes and not from its negligence, called a veterinary surgeon, who stated that the conditions he found in the lungs, on a postmortem examination, shewed that the foxes died of pneumonia and not from suffocation, and gave his reasons for his conclusion; the plaintiff, in answer or rebuttal, called another veterinary, and, on the evidence of the defendant's veterinary being read to him, stated that the symptoms described would not necessarily shew that death resulted from pneumonia, and were quite consistent with the supposition that it resulted from

suffocation. Held, that the evidence in answer or rebuttal was properly received.

Trenholm v. Dominion Express Co., 43 N.B.R. 98.

H. LEGAL QUESTIONS; MEANING OF TERMS; FOREIGN LAWS.

(§ VII H—631)—ABSTRACT OF TITLE.

The legal effect of an abstract of title to lands situated in a foreign country cannot be established by the conclusions of an attorney practising therein, but it is for the Court to construe the effect of all documents, having in view the foreign law with respect to them as proved by him.

Tucker v. Jones, 25 D.L.R. 278, 8 S.L.R. 387, 9 W.W.R. 620, 33 W.L.R. 1.

VIII. Confessions; testimony or evidence wrongfully obtained.

(§ VIII—670)—INTERROGATION BY POLICE—REPETITION OF STATEMENT AFTER CAUTION.

Where a person in custody as a material witness is interrogated by the police without being cautioned and thereupon makes admissions implicating himself in the crime, his repetition of the same statement before the same officers on another occasion, after being cautioned that he is not obliged to answer, but that if he does so, his statement may be used against him, will not be admitted if he was not further cautioned that his previous statements could not be used and that he need not repeat them or say anything further unless he so desired.

Rex v. Kong, 24 Can. Cr. Cas. 142, 20 B.C.R. 71.

(§ VIII—670)—PRIOR CAUTIONING BY POLICE CONSTABLE.

Answers made by the prisoner to questions propounded by the police at the police station are none the less admissible by reason of the fact that the usual caution was given by a constable while on the way there with the prisoner and that the latter was not again cautioned at the police station on his arrival there a few minutes later, if nothing was done to take away the effect of the caution. [*R. v. Elliott*, 3 Can. Cr. Cas. 95, 31 Ont. R. 14, and *R. v. Day*, 20 Ont. R. 209, followed.]

Rex v. Wallace, 24 Can. Cr. Cas. 158, 20 B.C.R. 97.

(§ VIII—670)—VOLUNTARY STATEMENTS.

A statement voluntarily made by the accused to a police officer after the usual caution on his arrest on a criminal charge is admissible on his trial upon another criminal charge not connected with the first. [*R. v. Kay*, 9 Can. Cr. Cas. 403, 11 B.C.R. 157, cited.]

Rex v. Van Horst, 24 Can. Cr. Cas. 157, 20 B.C.R. 81.

(§ VIII—671)—TESTIMONY OF ACCUSED IN PREVIOUS CIVIL PROCEEDINGS.

The evidence of the accused upon his

examination taken under sec. 52 of the Assignments Act, Alta., following his assignment for the benefit of creditors, is admissible against him on the trial of a criminal charge of obtaining credit on false pretences unless on the examination he has objected to answer upon the ground that the answer would tend to criminate him or upon some other of the grounds referred to in the Canada Evidence Act, R.S.C. ch. 145, sec. 5, or in the Alberta Evidence Act, 1910, Alta., 2nd session, ch. 3, sec. 7, and this although the examination proceedings may have been irregular. [*R. v. Widdop*, L.R. 2 C.C.R. 3, and *R. v. Van Meter*, 11 Can. Cr. Cas. 207, 3 Terr. L.R. 416, applied.]

Rex v. Graham, 21 D.L.R. 513, 8 A.L.R. 182, 24 Can. Cr. Cas. 54, 8 W.W.R. 460, 31 W.L.R. 117.

(§ VIII—674)—PROOF THAT VOLUNTARY.

Where the master, accompanied by a police constable, threatened his servant, saying "You will be arrested if you do not say where the stolen goods are," the statement made by the servant should be excluded from being put in evidence against him, because it was not made freely and voluntarily. [*R. v. Thompson*, [1893] 2 Q.B. 12; *Ibrahim v. The King*, [1914] A.C. 599; *R. v. Ryan*, 9 Can. Cr. Cas. 347, applied; and see *R. v. White*, 15 Can. Cr. Cas. 30, 18 O.L.R. 640; *R. v. Steffoff*, 15 Can. Cr. Cas. 366, 20 O.L.R. 103; *R. v. Rossi*, 17 Can. Cr. Cas. 182; *Trepanier v. The King*, 19 Can. Cr. Cas. 290; *R. v. Bogh Singh*, 21 Can. Cr. Cas. 323, 12 D.L.R. 626.]

Rex v. De Mesquito, 24 Can. Cr. Cas. 407, 9 W.W.R. 113, 32 W.L.R. 368.

IX. Admissions.

(§ IX—675)—OWNERSHIP OF LANDS.

Where the question at issue was whether the decedent, a former owner from whom no conveyance could be shewn, was or was not the owner at the time of his death, his admission that he had sold the land to defendant's predecessors, whom the evidence shewed he had let into possession and who with their successors had since exercised acts of ownership, such as logging on it, is admissible on defendant's behalf in the absence of any written evidence of the sale as a statement against decedent's interest to support the theory that he had sold the land and no longer claimed any title or interest therein as against plaintiff's claim of title under conveyances from such decedent's heirs taken with notice of such alleged sale and adverse possession; the admission was not in derogation of any grant made by the decedent, and as the plaintiff had identified himself in interest with the decedent, the latter's statement was admissible in evidence whether or not he was in possession at the time the admission was made. [*Ivat v. Finch*, 1 Taunt. 141, applied.]

Halifax Power Co. v. Christie, 23 D.L.R. 481, 48 N.S.R. 264.

[Appeal to Canada Supreme Court dismissed October 12, 1915.]

(§ IX—677a)—ADMISSION BY INFANT—DELITS.

A minor is not bound by the admission or the acknowledgement that he has made delits or quasi delits in the absence of any other proof of it.

Lachapelle v. Guay, 47 Que. S.C. 346.

X. Hearsay; declaration; res gestae.

A. IN GENERAL; PEDIGREE; REPUTATION.

(§ X A—681)—PROOF OF RELATIONSHIP AND SURVIVORSHIP.

Evidence of a witness that he is a member of a firm of bankers who had acted as agents for a family and had had business relations with it for over fifty years, that he personally knew the plaintiff and from the knowledge and belief derived from such knowledge of the family he believes the plaintiff to be a daughter and the only surviving child of such family, is proper proof of the relationship.

Simpson v. Malcolm, 43 N.B.R. 79.

(§ X A—684)—GIRL'S AGE IN SEDUCTION CHARGE.

The girl's own statement of her age as nineteen is not competent evidence on a charge under Code sec. 212 of seduction of a girl under twenty-one under promise of marriage, nor does Code sec. 984 (2) enable the jury to infer a girl's age from her appearance except in charges of crimes against children under sixteen years of age referred to in sec. 984. [Doe v. Ford, 3 U.C.Q.B. 352; Martin Hargreaves Co. v. Wrigley, 30 W.L.R. 92; Haines v. Guthrie, 13 Q.B.D. 818; R. v. Wedge, 5 C. & P. 297, referred to.]

Rex v. Hauberg, 24 Can. Cr. Cas. 297, 8 S.L.R. 239, 8 W.W.R. 1130, 31 W.L.R. 779.

(§ X A—684)—PROOF OF DEATH.

When it is impossible to inscribe a death upon the registry, as in the case of a person drowned whose body was not recovered and who could not be buried, proof of the death may be made by witnesses.

Lafflamme v. Levis Ferry, 47 Que. S.C. 291.

(§ X A—684)—PROOF OF DEATH BY LETTERS OF ADMINISTRATION.

Letters of administration are admissible to prove the death of the intestate. [Scribner v. Gibbon, 9 N.B.R. 182, followed.]

Simpson v. Malcolm, 43 N.B.R. 79.

H. COMPLAINTS OF INJURIES AND SUFFERING.

(§ X H—730)—STATEMENT BY DECEASED AS TO HAPPENING OF ACCIDENT.

In an action for compensation for death caused by the wrongful act or default or neglect of the defendant company, the defendant put in evidence, subject to objection of the plaintiff's counsel, a statement, made on cross-examination at the inquest by the doctor who attended the deceased immediately after the accident, as to what the deceased told him was the cause of the accident, and also a statement of a similar

character made to the manager of the defendant company shortly after the accident. Held, on a motion to set aside the verdict for the plaintiff or for a new trial, that a statement made by the deceased to the plaintiff shortly after the accident, explaining how it happened, was, under the circumstances, properly received, and was not a ground for a new trial.

Wentzell v. New Brunswick, etc., R. Co., 43 N.B.R. 475.

L. DYING DECLARATIONS OR THOSE MADE IN TRAVAIL.

(§ X L—750) — WHEN ADMISSIBLE — HOMICIDE.

A dying declaration is only admissible in the case of homicide where the death of the deceased is the subject of the charge and the circumstances which led to the death are the subject of the dying declaration. [R. v. Hutchinson, 2 B. & C. 605; R. v. Mead, 2 B. & C. 608a; R. v. Lloyd, 4 C. & P. 233; R. v. Hind, 29 L.J.M.C. 147, referred to.]

Rex v. Inkster, 24 Can. Cr. Cas. 294, 8 S.L.R. 233, 8 W.W.R. 1098, 31 W.L.R. 782.

XI. Relevancy and materiality.

F. PRICES; VALUES.

(§ XI F—790)—FRAUDULENT SALE OF SHARES — MISREPRESENTATIONS AS TO ASSETS.

In an action for the rescission of a sale of shares on the ground of fraudulent misrepresentations as to the assets of the corporation due to an exchange of timber lands, a question in the examination of the defendant for discovery as to whether he disposed of the lands or utilized them for profit, or raised money upon them, is irrelevant to the issue.

Appleton v. Moore, 23 D.L.R. 673, 8 W.W.R. 1286, 32 W.L.R. 114.

K. SIMILAR ACTS OR FACTS.

(§ XI K—831)—SIMILAR SLANDEROUS WORDS.

For the purpose of proving malice in action for slander actionable *per se*, evidence of similar slanderous words other than those set forth in the statement of claim is properly admissible.

King v. Londerville, 25 D.L.R. 352, 8 S.L.R. 376, 8 W.W.R. 1108, 31 W.L.R. 821.

XII. Weight; effect; and sufficiency.

A. IN GENERAL; CORROBORATION.

(§ XII A—920)—SEVERAL CAUSES OF ACTIONS — SIMILARITY OF EVIDENCE.

When there are several causes instituted at the same time and the evidence is declared to be common to all, this evidence should be considered as a whole and as applying to each case.

Montreal Invest., etc., Co. v. Sarault, 24 Que. K.B. 249.

(§ XII A—920)—ACTION FOR MONEY DUE UNDER CONTRACT WITH MUNICIPAL CORPORATION — FALSE RECEIPTS — FRAUDU-

LENT CONSPIRACY — ONUS — WEIGHT OF EVIDENCE—TESTIMONY OF ACCOMPLICES—CORROBORATION—FINDING OF FACT OF TRIAL JUDGE.

Jess v. City of Hamilton, 8 O.W.N. 489.

D. NEGLIGENCE; SKILL; CARE.

(§ XII D—943)—PERSONAL INJURIES FROM ELECTRICITY—SPECIFIC ACT OF NEGLIGENCE.

It is not enough for the plaintiff suing in tort for personal injuries alleged to be due to negligence to shew that he has sustained an injury under circumstances which may lead to a suspicion or even a fair inference that there may have been negligence on the part of the defendant; he is bound to give evidence of some specific act of negligence on the part of the defendant whom he seeks to make liable. [Lovegrove v. London Brighton and S.C.R.Co., 16 C.B.N.S. 669, applied; Till v. Town of Oakville, 20 D.L.R. 635, 31 O.L.R. 405, varied.]

Till v. Town of Oakville, 21 D.L.R. 113, 33 O.L.R. 120, 7 O.W.N. 667.

[Followed in Burrows v. G.T.R. Co., 23 D.L.R. 173.]

F. MATTERS AS TO PERSONS; RELATION OF PARTIES.

(§ XII F—950)—EXISTENCE OF ABSENTEE.

Mere information respecting an absentee furnished by third parties, the nature, origin and correctness of which cannot be established, does not prove the existence of the absentee.

Picard v. Picard, 48 Que. S.C. 316.

H. DOCUMENTS GENERALLY; OFFICIAL ACTS OR RECORD; DEMONSTRATIVE EVIDENCE.

(§ XII H—960)—BOOK ENTRIES.

Credit entries in a bank account are only *prima facie* evidence, which may be contradicted by parol evidence to shew that the amount credited was not in fact received. [Sovereign Bank v. Pyke, 14 D.L.R. 383, affirmed.]

Pyke v. Sovereign Bank of Canada, 24 D.L.R. 720, 24 Que. K.B. 198.

(§ XII H—964)—AUTHENTICITY OF ENTRIES BY CAPTAIN OF SHIP — WEATHER CONDITIONS.

Evidence from the log of a ship, although authentic as respects those matters which the captain is obliged by law to enter in it, has no evidentiary force for other matters added, such as atmospheric and meteorological variations indicating bad weather and tempests.

Dechêne v. C.P.R. Co., 47 Que. S.C. 431.

K. MISCELLANEOUS CIVIL CASES.

(§ XII K—978)—INFRINGEMENT OF TRADE-MARK—TRAP WITNESS—CONFUSION.

A person sent as a "trap-witness" to purchase an article of a certain brand claimed to be imitated, and who knew the distinctive

character of the various brands, does not establish confusion as an element of proof in an action for injunction for the infringement of a trade-mark.

Ogden Ltd. v. Can. Expansion Bolt Co., 22 D.L.R. 813, 33 O.L.R. 589, 8 O.W.N. 374.

XIII. Admissibility under pleadings; variance.

(See previous Annual Digests.)

EVOCATION (Quebec).

See Removal of Causes.

EXAMINATION.

Of party for discovery, see Discovery.

Of witnesses, see Witnesses; Depositions.

EXCEPTIONS.

In deed, see Deeds.

Objections and exceptions at trial, see Trial; New Trial.

Failure to take exception in lower Court and effect on appeal, see Appeal.

EXCHANGES.

Exchange of lands, see Vendor and Purchaser; Contracts, II D.

Enforcement of agreements for exchange of lands, see Specific Performance.

EXCHEQUER COURT.

See Courts; Admiralty; Salvage; Seamen; Shipping; Eminent Domain; Death.

EXECUTION.

I. IN GENERAL.

II. SUPPLEMENTARY PROCEEDINGS.

See also Levy and Seizure.

Exemption from, see Exemptions.

Of wills, see Wills, I.

Priorities under, see Interpleader; Attachment; Garnishment.

Annotations.

What property exempt from: 16 D.L.R. 6; 17 D.L.R. 829.

When superseded by assignment for creditors: 14 D.L.R. 503.

Stay of proceedings in actions by alien enemies: 23 D.L.R. 375.

As affected by moratorium: 22 D.L.R. 865.

I. In general.

(§ I—2)—SAISIE-ARRÊT AFTER JUDGMENT—CREDIT ON WRIT OF EXECUTION.

A creditor being able to use at the same time the different modes of execution given to him by law can take a *saisie-arrêt* after judgment and a writ of execution simultaneously. If the *saisie-arrêt* is first instituted and the *tiers-saisies* having declared that they were indebted at the time of the seizure and that they will owe more later on, the seizing creditor is only obliged to give credit

upon a writ of execution for the sums received by him up to that time, but not for the debts seized which will only become exigible in the future.

Dessaules v. De Sambor, 47 Que. S.C. 306.

(§ I-2)—LEAVE TO ISSUE—JUDGMENT.

Wigmore v. Greer, 8 O.W.N. 250.

(§ I-3)—SEIZURE OF CHEQUE TO DEBTOR.

A cheque by the sheriff in favour of the judgment debtor for the latter's remuneration on his employment by the sheriff to feed and care for certain horses seized as to which an interpleader was pending is not subject, while still in the sheriff's hands before delivery to the debtor payee, to seizure by the sheriff under Alberta practice rule 359, considered without reference to the new rule 615. [Courtroy v. Vincent, 21 L.J.Ch. 291, 51 E.R. 626, followed.]

Gregoire v. Markham Co., Ltd., 22 D.L.R. 747, 7 W.W.R. 1096, 30 W.L.R. 427.

(§ I-3)—GOODS NOT WHOLLY PAID FOR—MERGER OF DEBT IN CHATTEL MORTGAGE.

Goods which have not been wholly paid for, and the balance of the price of which has been secured by a chattel mortgage subsequently released, a cheque being taken for the balance then due, are not exigible by the sheriff under a judgment in an action upon the cheque. This is due to the fact that the simple contract debt became merged in the higher security effected by the chattel mortgage, and upon the release thereof no right to sue for the price of the goods as such revived.

Shenkman v. Steinbook, 7 W.W.R. 1051.

(§ I-4)—EXECUTION DE BONIS OR DE TERRIS—TIME OF ISSUING—DESCRIPTION.

A writ of execution *de bonis* must be exhausted before the issue of a writ *de terris* unless a *procès-verbal de carence* is produced, and it is not necessary in a petition for annulment of a decree on this ground to give a description of the moveables. [Rose v. Savoie-Guay, 7 D.L.R. 205, followed.]

James Bay & E.R. Co. v. Bernard, 23 D.L.R. 701, 24 Que. K.B. 6.

(§ I-6)—JUDGMENT—VARIATION—AMENDMENT.

Saskatchewan Land v. Moore, 9 O.W.N. 5.

(§ I-8)—EQUITABLE INTEREST IN LAND—LIEN FOR UNPAID PURCHASE MONEY.

A mere equitable interest in land cannot, unless authorized by statute, be reached by a common law *fi. fa.*; and in the absence of legislation giving that right, a vendor's equitable lien for the unpaid purchase money cannot be sold on execution.

Traunweiser v. Johnson, 23 D.L.R. 70, 8 W.W.R. 1028, 31 W.L.R. 712.

(§ I-8)—EQUITABLE INTERESTS—UNREGISTERED INTEREST OF PURCHASER.

An execution against lands does not by reason of sub-sec. (2) of sec. 118 of the Land Titles Act, Sask., as amended by Saskatchewan Statutes 1912-13, ch. 16, sec. 17, bind

equitable interests any more than equitable interests could have been bound prior to the passing of that amendment; and an unregistered interest of the purchaser under a contract of purchase from the registered owner under which the bulk of the purchase money remained unpaid is not bound by the execution. [C.P.R. Co. v. Silzer, 3 S.L.R. 162, followed; McPherson v. Temiskaming, 9 D.L.R. 726, [1913] A.C. 145, distinguished.]

Foss v. Sterling Loan, 21 D.L.R. 755, 8 S.L.R. 289, 8 W.W.R. 569.

[Affirmed in 23 D.L.R. 540.]

(§ I-8)—EQUITABLE ESTATES—PURCHASER'S INTEREST IN LAND—CAVEATS.

The filing of a caveat under sec. 17, ch. 16, of the Land Titles Act (Sask.), on a writ of execution does not bind the unascertained equitable interest of a vendee under an agreement for the sale of lands so as to make it enforceable against the interest in the lands under a transfer subsequently registered. [Foss v. Sterling Loan, 21 D.L.R. 755, affirmed.]

Foss v. Sterling Loan, 23 D.L.R. 540, 8 S.L.R. 289, 8 W.W.R. 1093, 31 W.L.R. 860.

(§ I-9)—SATISFACTION AND DISCHARGE—RE-SALE OF PROPERTY BY UNPAID VENDOR—COSTS.

A re-sale by a vendor of a saw-mill and machinery after the recovery of a judgment for the unpaid purchase instalments due thereon, will preclude the vendor, except as to the costs, from proceeding with the enforcement of the judgment even for the balance of the claim after crediting the amount realized upon the re-sale. [Affirmed by divided Court; Cameron v. Bradbury, 9 Gr. 67; Gibbons v. Cozens, 29 O.R. 356, followed; McPherson v. Temiskaming Lumber Co., 9 D.L.R. 726, referred to.]

McPherson v. U.S. Fidelity & Guaranty Co., 24 D.L.R. 77, 33 O.L.R. 524, 8 O.W.N. 299.

(§ I-9)—SATISFACTION FOUNDED ON WRONGFUL LEVY—SETTING ASIDE.

The Court has power to summarily set aside a sheriff's return of satisfaction on an execution founded upon a wrongful seizure and sale of property belonging to third persons, the value of which the execution creditor and the sheriff were compelled to repay to the claimants thereof in an action for conversion.

Bell v. Hart, 25 D.L.R. 389.

(§ I-10)—LIFE OF JUDGMENT—FURTHER RENEWALS.

Where execution was issued upon a judgment within six years after the date of the judgment, and the execution was kept alive by renewal for more than twenty years, further renewals may be obtained under r. 571, C.R. Ont. 1913; The Limitations Act, 10 Edw. VII. (Ont.), ch. 34, sec. 49, is no bar to such renewal. [Re Woodall, 8 O.L.R. 288; McDonald v. Grundy, 8 O.L.R. 113; Price v. Wade, 14 P.R. (Ont.) 351, distinguished.]

Poucher v. Wilkins, 21 D.L.R. 444, 33 O.L.R. 125, 7 O.W.N. 670.
[Distinguished in *Doel v. Kerr*, 25 D.L.R. 577, 34 O.L.R. 251.]

(§ I-11)—STAY PENDING APPEAL—WORKMEN'S COMPENSATION — ALTERNATIVE REMEDIES.

On the trial of this action, which was for damages at common law for alleged injury sustained, the jury awarded the plaintiff substantial damages, and judgment was entered accordingly. The defendant's counsel thereupon moved for a stay of execution pending an appeal to the Court en banc. The evidence shewed that in the event of the appeal being successful it would be impossible for the defendant to recover from the plaintiff any money which in the meantime the plaintiff might obtain under his judgment:—Held, that although sufficient grounds were shewn for a stay of execution in the ordinary case, yet as it appeared that the plaintiff would be entitled to substantial compensation under the Workmen's Compensation Act, and as the plaintiff's counsel had announced his intention to ask such compensation in the event of the defendant's appeal being allowed, a partial stay only should be granted, and a stay was accordingly ordered for the amount of the judgment less the sum of \$1,200 ordered to be paid into Court within ten days, and costs.

Schell v. City of Regina, 8 S.L.R. 24.

(§ I-11)—STAY OF APPEAL PENDING—DISMISSAL OF ACTION—STAY OPERATIVE AS TO COSTS ONLY.

Ottawa Separate School Trustees v. City of Ottawa, 25 D.L.R. 783, 9 O.W.N. 324.

(§ I-11)—STAY OF PENDING APPEAL—WHEN GRANTED—AFFIDAVIT SHEWING INABILITY TO REPAY.

Atkinson v. C.P.R. Co., 25 D.L.R. 769, 9 W.W.R. 110, 32 W.L.R. 246, 8 S.L.R. 179.

(§ I-11)—JUDGMENT FOR RECOVERY OF PURCHASE-MONEY OF LAND—PROCEEDING UNDER EXECUTION AFTER COMING INTO FORCE OF MORTGAGORS AND PURCHASERS RELIEF ACT, 1915—NECESSITY FOR LEAVE OF JUDGE UNDER SEC. 2—STAY OF EXECUTION FOR LIMITED PERIOD—TERMS.

McMurtry v. Bullen, 8 O.W.N. 401.

II. Supplementary proceedings.

(§ II-15)—DISTRIBUTION UNDER CREDITORS' RELIEF ACT—RIGHTS UNDER EXECUTION SUBSEQUENT TO ASSIGNMENT FOR CREDITORS.

Section 6 of the Creditors' Relief Act, R.S.O. 1914, ch. 81, applies to a case where the sheriff has realised money by sale of a debtor's property under execution, and made the entry required by sub-sec. 1, before the making by the debtor of a general assignment for the benefit of creditors; and the fund realised is divisible among all creditors coming in within the time limited by sub-sec. 2, although after the assignment. *Roach v. McLachlan*, 19 A.R. 496, and

Breithaupt v. Marr, 20 A.R. 689, distinguished, on the ground that the sheriff's sale in the first case was after the chattel mortgage and in the second case after the assignment, and so the sheriff was selling the goods of the chattel mortgagee and of the assignee. Dictum of MacLennan, J.A., in *Breithaupt v. Marr*, at p. 694, approved. Order of the Judge of the County Court of the County of Essex reversed.

Re Harrison, 35 O.L.R. 45, 26 D.L.R. 157.

(§ II-15)—ABSCONDING DEBTOR—DISTRIBUTION AMONG CREDITORS—PRIORITIES.

Moneys realized under the Rules of Court relating to absconding debtors and in the hands of a sheriff for distribution, which are not "the proceeds of the property of an absconding debtor," should be distributed among those creditors only whose executions of certificates were in the sheriff's hands within one month from the date of his entry in the execution book.

In Matter of the Creditors' Relief Act, 9 W.W.R. 225.

(§ II-15) — INTERPLEADER — CLAIMS FOR RENT AND WAGES—PRIORITIES—STATUTE VIII. ANNE.

In 1910 the plaintiff leased certain lands to the defendants on crop rentals. In October, 1911, certain differences arose, and an agreement was entered into whereby the plaintiff was to receive out of the crop grown on the said lands grain to the value of \$6,750, and the amount of certain notes. In November the plaintiff recovered judgment and issued execution against the defendants for \$9,016.75, being the total secured by the last-mentioned agreement. The sheriff made a seizure, and the grain was sold November 29, 1911. The claimants then filed their claims for wages under the Creditors' Relief Act. The plaintiff then disputed their claims, and claimed the entire proceeds as rent. On an interpleader before the Local Master at Moose Jaw, the plaintiff was held entitled to the whole of the money as rent. The claimants appealed to a Judge in Chambers:—Held, that the Statute of VIII Anne, ch. 14, does not apply when the landlord is also the execution creditor, the Act only contemplating executions issued by third parties.

Douglas v. Vivian, 7 S.L.R. 80.

(§ II-15)—MONEY IN COURT—MONEY TO CREDIT OF EXECUTION DEBTOR—PAYMENT OUT TO SHERIFF FOR DISTRIBUTION AMONG CREDITORS—CLAIMS BY ASSIGNEES OF DEBTORS — CONSIDERATION — INVALIDITY—COSTS.

Chaplin v. Chaplin, 9 O.W.N. 123.

EXECUTORS AND ADMINISTRATORS.

I. APPOINTMENT; RESIGNATION; REMOVAL.

II. POWERS AND LIABILITIES; CONDUCT OF ESTATE; ASSETS.

- A. Rights, powers and duties.
- B. Liabilities.
- C. Assets.

III. SUITS AFFECTING ESTATE.

- A. On behalf of.
- B. Suits and judgments against.

IV. INDEBTEDNESS; DISTRIBUTION; ACCOUNTING AND SETTLEMENT.

- A. Debts and obligation.
- B. Instructions and control by Court.
- C. Distribution; accounting; settlement; discharge.

V. CREDITOR'S RIGHTS AGAINST LAND; SALE OF LAND FOR DEBTS.

VI. FOREIGN EXECUTORS AND ADMINISTRATORS.

VII. EXECUTORS DE SON TORT.

Recovery by administrators for causing intestate's death, see Death; Master and Servant.

Measure of damages, see Damages.

As to legacies generally, renunciation, see Wills.

Appointment of trustees, generally, powers, see Trusts, II.

Annotations.

Compensation; mode of ascertainment: 3 D.L.R. 168.

Status of alien enemies as: 23 D.L.R. 375, 380.

I. Appointment; resignation; removal.

(§ I—6)—ADMINISTRATOR C.T.A. — APPOINTMENT OF RESIDUARY LEGATEE — PROCEDURE.

Where there are several residuary legatees and no executor, one of them may take out letters of administration with the will annexed, without the consent of or notice to the others, and may proceed to prove the will in solemn form, either *mero motu* or in consequence of having been challenged to do so by a party whose interests are adverse to it.

Curtis v. Skeffington, 9 W.W.R. 834.

(§ I—13)—REMOVAL — GROUNDS — INDEBTEDNESS TO ESTATE.

It is not a ground for removing an executor that he is himself indebted to the estate upon a mortgage made to the testator if there are no arrears owing by him upon it.

Cooper v. Taylor, 22 D.L.R. 393.

(§ I—13)—REMOVAL — GROUNDS — PERMITTING SURVIVING PARTNER TO CONTINUE BUSINESS.

It is not a ground for removing an executor from office that he had permitted the salaried and only partner in the deceased's law practice to take entire charge of the closing out of the accounts of the law practice for the estate, where the salaried partner, by reason of his name being used in the partnership name, was personally liable to the clients and interested in seeing that trust funds were promptly accounted for, and no impropriety was shewn in the partner's administration nor any loss attributable thereto.

Cooper v. Taylor, 22 D.L.R. 393.

(§ I—13)—REMOVAL — GROUNDS — UNPROFITABLE INVESTMENTS.

In a substitution the institutes have the right to perform conservatory acts such as the demand for removal of the executor in possession of the substituted property. An action for the removal of an executor by which it is alleged that the latter is badly administering the property of the succession sufficiently states the grounds for the removal to enable the plaintiff to resist an inscription *en droit*. An executor who leaves the funds of the succession on deposit in the bank at 3%, when he could place them much more profitably in hypothecary loans, shews incapacity which justifies the interested parties in demanding his removal. Nevertheless, the Court, in the absence of fraud and when the executor is solvent, instead of removing him may order him to place the money of the succession as required by law within a specified delay and reserve the final decision upon the demand in case of his default in making such investments. (Inscribed in review.)

Robert v. Martin, 48 Que. S.C. 27.

II. Powers and liabilities; conduct of estate; assets.

A. RIGHTS, POWERS AND DUTIES.

(§ II A 1—24) — PROMISSORY NOTE — ENDORSEMENT.

An executor, who has received from the testator only the usual powers conferred by law, has no right to endorse promissory notes. When an executor endorses notes the succession that he represents will not be liable for them if it is not proved that it benefited from them.

Carriage Harness v. Grenier, 47 Que. S.C. 310.

(§ II A 2—44a)—CONDUCT OF ESTATE—HOMESTEAD AND PRE-EMPTION LANDS—MORTGAGE BY EXECUTOR—INFANT DEVISEES—RIGHT TO HAVE TRUST DECLARED.

Roberts v. National Trust Co., 23 D.L.R. 890, 32 W.L.R. 55.

B. LIABILITIES.

(§ II B—45)—MAINTENANCE OF CHILDREN—LIABILITY FOR TUITION FEES.

In a case where a testator has appointed his wife his executrix with instructions to have his children educated, and a tutor is appointed for the children who without opposition on their part looks after their maintenance and education and incurs therefor expenses to the amount of \$395, the executrix will be obliged to pay this amount the tutor having acted as her *negotiorum gestor*. A testator has the right to give to his executor the control of the education of his children.

Bruneau v. Paquette, 48 Que. S.C. 282.

III. Suits affecting estate.

B. SUITS AND JUDGMENTS AGAINST.

(§ III B—70) — SPECIFIC PERFORMANCE

AGAINST—AGREEMENT TO TRANSFER COMPANY STOCK.

[McGregor v. Curry, 20 D.L.R. 706, 31 O.L.R. 261, affirmed.]

Curry v. McGregor, 25 D.L.R. 771.

(§ III B—70)—COSTS—WHEN ALLOWED OUT OF ESTATE.

Where a man defends an action brought against him as executor and fails, he may be forced to pay the costs out of his own pocket; but he is entitled to be allowed, out of the estate in his hands as executor, all reasonable expenses which have been incurred in the management of the estate, and these include the costs of an action reasonably defended. A Surrogate Court Judge, when asked to allow an executor such costs, must deal with them as charges and expenses; and the direction of the trial Judge in the action in which such costs were incurred, as to allowance out of the estate or otherwise, cannot bind the Surrogate Court Judge. [Section 19 of the Surrogate Courts Act, R.S.O. 1914, ch. 62, considered. In re Beddoe, [1893] 1 Ch. 547, followed.] Where the plaintiff's costs of an action brought against an executor as such were, by the judgment in the action, ordered to be paid by the executor, and were so paid, the allowance by the Surrogate Court Judge to the executor, on his passing his accounts, of the sum so paid, and also his own costs of defending the action, was affirmed—there being nothing to shew that the action was unreasonably defended.

Re Dingman, 35 O.L.R. 51, 9 O.W.N. 272.

(§ III B—70)—ACTION BY DISTRIBUTE TO RECOVER SHARE OF ESTATE BY EXECUTORS OF DECEASED ADMINISTRATOR—"TRUSTEE"—LIMITATIONS ACT, R.S.O. 1914, CH. 75, SECS. 47, 48—BREACH OF TRUST—ADMINISTRATION BOND—REMEDY BY ACTION AGAINST BONDSMEN—COMMENCEMENT OF PERIOD FOR STATUTORY BAR—ASSETS IN HANDS OF EXECUTORS.

Armstrong v. McIntyre, 9 O.W.N. 240.

IV. Indebtedness; distribution; accounting and settlement.

A. DEBTS AND OBLIGATIONS.

(§ IV A 1—75)—FALSE CLAIMS—PENALTY—COSTS.

A plaintiff making an unfounded charge against an executor of having made a secret commission will be visited with costs to the fullest extent possible.

Cooper v. Taylor, 22 D.L.R. 393.

(§ IV A 1—75)—CLAIMS AGAINST ESTATE—MEDICAL ATTENDANCE UPON DECEASED—REASONABLENESS OF CHARGES.

Barnaby v. O'Donnell, 25 D.L.R. 739.

(§ IV A 2—80)—PROOF OF CLAIMS—CORROBORATION.

The corroborative evidence required in proof of a claimed cause of action against the estate of a deceased person under the

Evidence Act, R.S.B.C. 1911, ch. 78, sec. 11, must be of a material character, supporting the claimant's case, although not necessarily sufficient in itself to establish the case. [Thompson v. Coulter, 34 Can. S.C.R. 261, applied; Vavasour v. Vavasour, 25 Times L.R. 250, and Doidge v. Mimms, 13 Man. L.R. 48, referred to.]

Ledingham v. Skinner, 21 D.L.R. 300, 21 B.C.R. 41, 8 W.W.R. 52, 30 W.L.R. 741.

(§ IV A 2—80)—CLAIMS—PRESENTATION AND PROOF—CORROBORATION.

Where the transactions between the plaintiff and the deceased were separate, each giving rise to a separate cause of action, corroboration in regard to one transaction is not corroboration in regard to the other as against the estate of the deceased person in an action to establish an agency and to recover an alleged secret profit as to both transactions. [Cook v. Grant, 32 U.C.C.P. 511; Re Ross, 29 Gr. 385; Voyer v. Lepage (1914), 19 D.L.R. 52, affirming 17 D.L.R. 476, referred to.]

Dandy v. National Trust Co. Ltd., 22 D.L.R. 153, 30 W.L.R. 461.

(§ IV A 2—80)—CLAIM AGAINST EXECUTOR—PROMISE TO PAY SUM OF MONEY ON SETTLEMENT OF ACTION FOR RENT—EVIDENCE OF SOLICITOR—CORROBORATION—PROMISE MADE TO PERSONS REPRESENTING ESTATE OF DECEASED LESSOR—CONFIRMATION AFTER ISSUE OF LETTERS OF ADMINISTRATION—STATUTE OF FRAUDS—CONSIDERATION—PUBLIC POLICY—COSTS.

McEwan v. Toronto General Trusts Corp., 9 O.W.N. 185.

(§ IV A 2—82)—CLAIM FOR SERVICES RENDERED DECEASED FOR LONG PERIOD—PROMISE TO PROVIDE BY WILL—PART OF CLAIM BARRED BY LIMITATIONS.

Re Rutherford, 25 D.L.R. 782, 34 O.L.R. 395, 9 O.W.N. 32.

C. DISTRIBUTION; ACCOUNTING; SETTLEMENT; DISCHARGE.

(§ IV C 1—100)—DISTRIBUTION IN SPECIE—SHARES OF STOCK.

Where in the administration of the estate of an intestate a sale of shares of stock cannot be profitably made because of the uncertainty of their market value, a distribution in specie will not be allowed over the objections of certain next of kin, if in effect it would place the control of the corporation in favour of some over the others.

Re Harris, 22 D.L.R. 381, 33 O.L.R. 83, 7 O.W.N. 597.

(§ IV C 1—100)—SETTLED ESTATES ACT—MONEY IN COURT—PAYMENT OUT TO EXECUTORS TO BE APPLIED ACCORDING TO TRUST OF WILL.

Re Moisse, 8 O.W.N. 542.

(§ IV C 1—100)—ADMINISTRATOR'S ACCOUNT—PAYMENT OF DEBTS IN FULL—PRESUMPTION AS TO ASSETS—IDENTIFICATION OF ASSETS—IDENTIFICATION OF ASSETS OF

ANOTHER ESTATE—ACCOUNT—REFERENCE
—JUDGMENT—MODIFICATION ON APPEAL
—COSTS.

Godkin v. Watson, 9 O.W.N. 251.

(§ IV C 1—100)—SHARE OF BENEFICIARY—
SETTLEMENT—INCOME AND CAPITAL.
Re Hamilton, 9 O.W.N. 144.

(§ IV C 2—110)—COMPENSATION — FUTURE
SERVICES.

An executor or trustee should not be allowed by an interim order a large sum as compensation for future services; the same rule should be applied even where a duly authorized trust company is the executor.

Re Fortune Estate, 21 D.L.R. 646, 25 Man. L.R. 239, 30 W.L.R. 735.

(§ IV C 2—110)—COMPENSATION—INTEREST
—BEQUEST OF.

Where it was not necessary for the realization of the estate for the administratrix to carry on the business as she did for some time after the decedent's death, and the direction of his will was that the same should be sold and converted into money to be invested at interest, the administratrix may be allowed a reasonable amount for her services for carrying on the business which resulted in large profits, and may be allowed interest for the period during which the business was carried on to be computed at a reasonable rate on the amount of capital which the business represented at the testator's death, under a bequest to her of the "interest" on the fund to which the proceeds of the business belonged, but she is not entitled to take the entire profits as interest; the surplus profits are to be treated as belonging to the corpus of the estate.

Re Bean Estate, 23 D.L.R. 335.

(§ IV C 2—110)—SURROGATE COURTS—OR-
DER OF JUDGE ON PASSING ACCOUNTS FIX-
ING COMPENSATION OF EXECUTORS—AP-
PEAL—FORUM—SURROGATE COURTS ACT,
SEC. 34.

Re Henderson, 8 O.W.N. 31.

V. Creditor's rights against land; sale of
land for debts.

(§ V—125)—EXECUTION OF TRUSTS—SURVIV-
ING EXECUTOR—TRUSTEE ACT, R.S.O.
1914, CH. 121—SALE OF LAND CHARGED
WITH PAYMENT OF LEGACIES—CAUTION—
REGISTRATION—DEVOLUTION OF ESTATES
ACT, R.S.O. 1914, CH. 119, SEC. 14—
TRANSFER OF INTERESTS—INTEREST ON
LEGACIES.

Re Luton, 7 O.W.N. 768.

VI. Foreign executors and administrators.

(§ VI—130)—ALIEN EXECUTOR—QUALIFICA-
TIONS UPON OATH—PROBATE TO.
Smithson v. Smithson, 25 D.L.R. 745, 9
W.W.R. 501.

(§ VI—130) — FINAL DISTRIBUTION — PAY-
MENT OF BALANCE TO FOREIGN ADMINIS-
TRATRIX.

Re Law, 24 D.L.R. 871, 34 O.L.R. 222, 8
O.W.N. 550.

(§ VI—130)—PROPERTY OF INTESTATE DOMI-
CILED IN FOREIGN COUNTRY—ANCILLARY
ADMINISTRATION — TITLE TO COMPANY-
SHARES — SITUS — JURISDICTION AS TO—
SALE.

Re Fenwick, 25 D.L.R. 850, 35 O.L.R. 29,
9 O.W.N. 227.

VII. Executors de son tort.

(See previous Annual Digests.)

EXEMPLARY DAMAGES.

See Damages.

EXEMPTIONS.

I. IN GENERAL.

II. PROPERTY AND RIGHTS EXEMPT.

A. In general.

B. Tools, implements, etc.

III. WHO MAY CLAIM.

See Levy and Seizure; Homestead.

From taxation, see Taxes, I F.

Annotations.

What property is exempt: 16 D.L.R. 6;
17 D.L.R. 829.

I. In general.

(See previous Annual Digests.)

II. Property and rights exempt.

A. IN GENERAL.

(§ II A—5)—EXERCISE OF RIGHT—ASSIGN-
MENT FOR CREDITORS.

The right to claim an exemption as against an assignee for creditors is founded on the restrictive words used in sec. 17 of the Homestead Act, R.S.B.C. 1911, ch. 100, and in the instrument of assignment which adopts the words of the Act; and in order to be entitled to such right it must be claimed at the time of the delivery of possession to the assignee or within a reasonable time thereafter, else it will be presumed to have been waived. [Sehl v. Humphreys, 1 B.C.R., pt. 2, 257; Pilling v. Stewart, 4 B.C.R. 94; Re Ley, 7 B.C.R. 94; Yorkshire v. Cooper, 10 B.C.R. 65, applied.]

Roy v. Fortin, 25 D.L.R. 18, 9 W.W.R. 407, 32 W.L.R. 790.

(§ II A—16)—WAGES.

Article 599, par. 9, C.P.Q., declaring wages non-seizable in a certain proportion, assimilates thereby the part non-seizable to other exempt property as respects debts for maintenance. It follows that for such a debt the non-seizable part of the wages can be seized.

Panneton v. Gagnon, 47 Que. S.C. 8.

III. Who may claim.

(See previous Annual Digests.)

EXHIBITIONS.

License for exhibitions, see License;
Amusements.

EXPERT EVIDENCE.

In general, see Evidence.

EXPLOSIONS AND EXPLOSIVES.

Injuries resulting, see Death; Negligence;
Master and Servant; Electricity.

EXPROPRIATION.

See Eminent Domain.
Arbitration on, see Arbitration and Award.

Measure of compensation, see Damages.

EXTENSION OF TIME.

See Moratorium.
For appeal, see Appeal.

EXTORTION.

See Secret Commissions.

EXTRADITION.

- I. INTERNATIONAL.
- II. WITHIN BRITISH EMPIRE.

I. International.**(§ I—8)—THEFT OR LARCENY—PROOF OF FOREIGN LAW.**

An order for extradition to the United States on a charge of larceny of promissory notes is justified where the facts disclosed in the extradition proceedings make out a *prima facie* case of theft under Canadian law without more in proof that such facts constitute larceny under the foreign law than might be inferred from his indictment in the foreign state for the offence. [Re Murphy, 2 Can. Cr. Cas. 578, 23 A.R. 386; R. v. Watts, 5 Can. Cr. Cas. 246, 3 O.L.R. 368; Porter v. McManus, 25 N.B.R. 215, applied.]

Re Deering, 24 D.L.R. 818, 24 Can. Cr. Cas. 133, 49 N.S.R. 41.

II. Within British Empire.

(See previous Annual Digests.)

EXTRA WORK.

Recovery for, in building contracts, see Contracts.

EXTRINSIC EVIDENCE.

See Evidence.

FACTORS.

See also Brokers; Principal and Agent.

(§ I—6)—COMMISSION ON SALES—REDDITION OF ACCOUNT.

In an action by a factor claiming a fixed sum as commission, and demanding, moreover, that his principal be condemned to render him an account for certain sales made by him and upon which he is entitled to a commission, the Court may, if the plaintiff has already examined the defendant and his books during the trial, determine

the amount due to the agent for his commission, without any reddition of account from the principal.

Holstead v. Sommer, 48 Que. S.C. 383.

FACTS.

Review of facts, see Appeal.
Consideration by jury, see Trial.
Conclusiveness of, see Judgment.
Presumptions as to, see Evidence.

FALSE IMPRISONMENT.

- I. IN GENERAL.
- II. WHO LIABLE.
 - A. In general.
 - B. Officer.
- III. DEFENCES; JUSTIFICATION.
- IV. IN CIVIL CASES.

Measure of damages for, see Damages, III.
See also Malicious Prosecution; Arrest.

Annotation.

False arrest; Reasonable and probable cause; English and French law compared: 1 D.L.R. 56.

I. In general.

(See previous Annual Digests.)

II. Who liable.**A. IN GENERAL.****(§ II A—7)—ILLEGAL ARREST FOR PERJURY—WHAT MUST BE PROVEN.**

In an action for damages on account of an illegal arrest for perjury, it should be first proven that an oath was taken before a Court in which the testimony was given. In such an action to ascertain if there has been perjury, it is necessary, in examining the deposition of the accused witness, to take not only a part of what he said, but also the qualifications which he added to his statement.

Lafontaine v. Fournier, 48 Que. S.C. 113.

B. OFFICER.**(§ II B—13)—CONSTABLE'S CLAIM FOR INDEMNITY AGAINST MUNICIPALITY.**

A police constable paid by the city has no claim for indemnity against the city for damages awarded against him in an action for false arrest where a person charged with a criminal offence was arrested without warrant under circumstances in which a warrant was necessary, the warrant being afterwards granted, but the charge being finally dismissed.

Pon Yin v. City of Edmonton, 24 Can. Cr. Cas. 327, 31 W.L.R. 402, 8 W.W.R. 809.

III. Defences; justification.**(§ III—15)—FALSELY WARRANTING BUSINESS AS FREE FROM DEBT—FALSE PRETENCES.**

The arrest of a vendor for obtaining money under false pretences is not justified because the vendor declared in his deed of sale that

he sold his restaurant "free and clear of all debts," while in fact he was in debt to his tradesmen. Such declaration is only a guarantee that the vendor will himself pay his debts.

Calogery v. Spencer, 47 Que. S.C. 12.

IV. In civil cases.

(See previous Annual Digests.)

FALSE PRETENCES.

As ground for civil action, see Fraud and Deceit.

(§ I—5)—OBTAINING CREDIT—FALSE STATEMENT BY DIRECTOR AS TO FINANCIAL CONDITION.

The "prospectus, statement or account," the fraudulent issue of which by a director is made indictable under Cr. Code sec. 414, where done, *inter alia*, with intent to induce any person to advance any money to the company, does not include a statement made to a bank of his private affairs by a director offered by the company as its surety on obtaining a line of credit for the company, where the statement did not concern the financial standing or affairs of the company itself; but if the defendant obtained a credit for himself on his guaranty, although the money was actually paid to the company, and he benefited by it, a charge may be laid under Cr. Code sec. 405A, for obtaining such credit under false pretences, and, *semble*, that since the enactment of Code sec. 407A (Code Amendment of 1913), it is an indictable offence for a person knowingly to make any false statement in writing, with intent that it shall be relied upon, respecting his financial condition for the purpose of procuring a loan or credit for a company in which he is interested. [R. v. Campbell, 5 D.L.R. 370, 19 Can. Cr. Cas. 407, and R. v. Boyd, 4 Can. Cr. Cas. 219, considered.]

Re x v. Cohen, 25 D.L.R. 510, 24 Can. Cr. Cas. 238, 33 O.L.R. 340, 8 O.W.N. 110.

(§ I—6)—FRAUDULENT OBTAINING OF ONE'S OWN OVERDUE NOTES.

A person may be convicted of obtaining the return to himself of his own promissory notes from the payee if such return is obtained under false pretences, and it is not a ground of defence that the notes were overdue when so obtained.

Abeles v. The King, 24 Can. Cr. Cas. 308, 24 Que. K.B. 260.

FALSE REPRESENTATIONS.

In insurance policy, see Insurance, III.

In general, see Fraud and Deceit.

When criminal offence, see False Pretences.

As ground for rescission, see Contracts; Vendor and Purchaser.

FARES.

Of passengers, see Carriers; Street Railways.

FARM CROSSINGS.

Duty of railway company as to, see Railways; Carriers; Highways.

Powers of Railway Board as to, see Railway Commission.

FATAL ACCIDENTS ACT.

See Death; Negligence; Master and Servant; Lord Campbell's Act.

FEE SIMPLE.

See Deeds; Wills, III.

FEEES.

In general, see Costs.

Of officers, see Officers, II.

On levy and seizure, see Execution; Levy and Seizure; Interpleader; Attachment; Garnishment.

Attorney's fees, see Solicitors.

FELLOW-SERVANTS.

Generally, see Master and Servant.

FENCES.

As to line fence, see Boundaries.

As to railways, see Railways.

FERRIES.

See Carriers; Shipping.

(§ I—9) — CONTRACTS — COMMUTATION TICKETS—REGULATIONS—"FAMILY."

Fort Erie v. Fort Erie & Buffalo Ferry Co., 9 O.W.N. 135.

FIDELITY ASSURANCE.

See Bond, II.

FIDUCIARY RELATIONS.

Of agents, see Principal and Agent; Brokers.

Of trustees, see Trusts.

Between attorney and client, see Solicitors.

FIERI FACIAS.

See Execution.

FIGHTING.

See Assault and Battery.

FILING.

In general, see Record and Registry Laws. Of chattel mortgage, see Chattel Mortgages, II.

Of mechanics' lien, see Mechanics' Liens.

Of bill of sale, see Bills of Sale.

Instruments relating to land, see Land Titles.

FINDINGS.

Review of discretion of trial Court as to special findings, see Appeal.

By jury, see Trial.

As grounds for new trial, see New Trial.

FINE.

For contempt, see Contempt.

As to penalties generally, see Penalties; Forfeiture; Damages, III.

As to summary conviction matters, see Summary Conviction; Certiorari.

In Criminal proceedings generally, see Criminal Law, IV.

FIRES.

As to fire escapes on buildings, see Buildings, II.

Liability of railway for, see Railways, II.

Injuries caused by fireworks, see Fireworks.

(§ I—1) — DESTRUCTION OF PROPERTY — NEGLIGENCE — EVIDENCE — DAMAGES — FINDINGS OF FACT OF TRIAL JUDGE — APPEAL.

Nixon v. Nickerson, 8 O.W.N. 15.

(§ I—1) — SETTING OUT ON DEFENDANT'S LAND — ESCAPE TO PLAINTIFF'S LAND — DESTRUCTION OF PLAINTIFF'S PROPERTY — FIRE SET OUT FOR PROPER PURPOSE — LACK OF REASONABLE CARE TO PREVENT IT SPREADING — NEGLIGENCE — FINDINGS OF FACT OF TRIAL JUDGE — APPEAL — DAMAGES — QUANTUM.

Hassan v. Reynolds, 8 O.W.N. 136.

(§ I—6) — NEGLIGENT OPERATION OF THRESHING ENGINE — OPEN SPARK ARRESTER — PLACING OUTFIT IN DIRECTION OF WIND — CLOSE PROXIMITY TO BARN — MANURE PILES.

Farb v. Nelson, 25 D.L.R. 729.

FIREWORKS.

(§ I—1) — FIREWORKS DISPLAY — LIABILITY FOR INJURIES.

In order to establish liability in negligence against those lawfully conducting a fireworks display in a public park for injury received from an ignited fragment, a failure on their part to exercise due care must be shewn. [Rylands v. Fletcher, L.R. 3 H.L. 330, referred to.]

Halpin v. Victoria, 23 D.L.R. 333, 21 B.C.R. 14, 7 W.W.R. 1058.

FISHERIES.**I. PUBLIC FISHERIES GENERALLY.****A. In general.****B. Regulations and protection.****II. PRIVATE RIGHTS.****III. SHELL FISH, OYSTERS, AND CLAMS.**

Water rights in general, see Waters.

I. Public fisheries generally.**A. IN GENERAL.**

(§ I A—1) — ILLEGAL FISHING — APPEARANCE OF AMERICAN FISHING VESSEL WITHIN PROHIBITED ZONE — FISHERIES AND BOUNDARIES CONVENTION.

Where a foreign fishing vessel has com-

mitted a breach of clause (b) of sec. 10 of the Customs and Fisheries Protection Act (R.S. 1906, ch. 47) by entering the three-mile limit for some purpose not permitted, she is liable to seizure and forfeiture notwithstanding that she was actually seized outside of the three-mile limit. That the Fisheries and Boundaries Convention of 1818, between Great Britain and the United States, does not apply to the coast of British Columbia so far as fisheries are concerned. That under art. 1 of the Convention of Commerce and Navigation, 1815, between Great Britain and the United States, no liberty or right is given to foreign vessels to carry on fisheries, but simply "to come with their cargoes to all such places, ports and rivers in the territories aforesaid, to which other foreigners are permitted to come, but subject always to the laws and statutes of the two countries respectively." Sec. 186 of the Customs Act, R.S. 1906, ch. 47, would, therefore, apply, which makes it unlawful for a vessel to enter any place other than a port of entry unless from stress of weather or other unavoidable cause; as there was no cause justifying the entry of the vessel into the "place" or natural harbour on Cox Island, it was liable to seizure.

The King v. Schooner Valiant, 15 Can. Ex. 392, 16 D.L.R. 824.

II. Private rights.**III. Shell fish, oysters, and clams.**

(See previous Annual Digests.)

FIXTURES.

(§ IV—22) — MACHINERY — RIGHTS OF LANDLORD AND MORTGAGEE.

An emulser in a boiler room, a cream separator, an ice chopper, fastened to the building by bolts imbedded in the cement floor, also a phase motor fastened by coach screws to a frame bracket, which is nailed to the wall, and the supports of the brackets embedded in the cement floor, are fixtures permanently annexed to the freehold and forming part thereof, and are not distrainable for rent as against the right of a mortgagee of the realty; but that does not apply to a vat used in connection with the same business which is not fastened to anything. [Hobson v. Gorrington, 12 Rul. Cas. 217; Stack v. Eaton, 4 O.L.R. 335, 338; Seeley v. Caldwell, 18 O.L.R. 472, applied.]

Assiniboia Land Co. v. Acres, 25 D.L.R. 439, 8 S.L.R. 426, 9 W.W.R. 368, 32 W.L.R. 580.

FORCIBLE ENTRY AND DETAINER.

(See previous Annual Digests.)

FORECLOSURE.

See Mortgage.

Of vendor's lien, see Vendor and Purchaser.

As affected by moratorium, see Moratorium.

Annotations.

Effect of moratorium on foreclosure actions: 22 D.L.R. 885.

Remedies of alien enemies affected by war: 23 D.L.R. 375.

FOREIGN COMMISSION.

See Depositions.

FOREIGN JUDGMENT.

See Judgment.

FORFEITURE.

Penalty or liquidated damages, see Damages, III.

(§ I—4)—OF PAYMENTS UNDER LAND CONTRACT ON DEFAULT — PENALTY — RELIEF AGAINST.

A provision in a contract for the sale of land, that in case the purchaser should make default in any of the payments the vendor shall be at liberty to cancel the agreement and to retain any payments made on account of it by way of liquidated damages, and to retain all improvements made on the premises, is in the nature of a penalty, against which the Court will grant relief on proper terms. [Drinkle v. Steedman, 14 D.L.R. 835, 7 S.L.R. 20, 5 W.W.R. 706, reversed.]

Steedman v. Drinkle, 25 D.L.R. 420, 9 W.W.R. 1146.

FORGERY.

Forged land transfers, see Land Titles.

FORMER JEOPARDY.

See Criminal Law.

FORMER SUIT PENDING.

As ground for stay, see Stay of Proceedings.

FORTUITOUS EVENT.

See Act of God; Negligence.

FRAUD AND DECEIT.**I. IN GENERAL.****II. CONCEALMENT; FAILURE TO DISCLOSE FACTS.****III. MATTERS OF OPINION OR OF THE FUTURE.****IV. INTENT, KNOWLEDGE, BELIEF, AND RELIANCE OF PARTIES.****V. TO OBTAIN CREDIT.****VI. IN RESPECT TO NEGOTIABLE PAPER.****VII. MISINFORMATION BY THIRD PERSON.****VIII. REMEDIES.**

Statute of Frauds, see Contracts.

In issue of stock of officers and promoters, see Corporations and Companies.

As to false pretences, see False Pretences.

In application for insurance, see Insurance, III.

Of agent, see Principal and Agent; Brokers.

In sale of land, see Vendor and Purchaser; Land Titles.

Effect of on right to specific performance, see Specific Performance; on equitable remedies, see Equity.

Annotations.

Rescission of contract for fraud or misrepresentation: 21 D.L.R. 329.

Share subscription obtained by fraud or misrepresentation: 21 D.L.R. 103.

I. In general.

(§ I—1)—WHAT CONSTITUTES.

Fraud is proved when it is shewn that a false representation has been made knowingly or without belief in its truth or recklessly, careless whether it be true or false. [Derry v. Peek, 14 A.C. 337, applied.]

Bergh v. Frost, 23 D.L.R. 406.

II. Concealment; failure to disclose facts.**III. Matters of opinion or of the future.**

(See previous Annual Digests.)

IV. Intent, knowledge, belief, and reliance of parties.

(§ IV—20)—ABSCONDING DEBTOR—INTENT TO DEFRAUD.

The departure from the province of Quebec of a person domiciled in the United States and who has contracted a debt in Quebec while there for a temporary purpose is not sufficient to shew intent to defraud the Quebec creditor without evidence of special intention to defraud to maintain a writ of seizure before judgment.

MacKenzie v. O'Connell, 22 D.L.R. 537.

V. To obtain credit.**VI. In respect to negotiable paper.****VII. Misinformation by third person.**

(See previous Annual Digests.)

VIII. Remedies.

(§ VIII—35)—DELAY IN DISCOVERING THE FALSITY AS DEFENCE.

Where a party to a contract induces the other party to enter into it by a material and false representation, the effect of such false representation cannot be got rid of on the ground that the person to whom it was made might have discovered the truth if he had used diligence, unless there is such delay as constitutes a defence under statutory limitations. [Sager v. Manitoba Windmill Co., 13 D.L.R. 203, 16 D.L.R. 577, 7 S.L.R. 51, affirmed; Clough v. L. & N.W.R. Co., L.R. 7 Ex. 26, 41 L.J.Ex. 17, applied.]

Sager v. Manitoba Windmill & Pump Co., 23 D.L.R. 556, 7 W.W.R. 1213.

(§ VIII—35)—FRAUD AND MISREPRESENTATION IN SALE OF LAND—DAMAGES.

Hocken v. Shadle, 8 O.W.N. 619, 9 O.W.N. 303.

FRAUDULENT CONVEYANCES.

- I. IN GENERAL.
- II. CONSIDERATION.
- III. PREFERENCES; SECURITY.
- IV. NOTICE; RIGHTS AND LIABILITIES OF PURCHASER.
- V. RESERVATION OF INTEREST; CHANGE OF POSSESSION.
- VI. TRANSACTIONS BETWEEN RELATIVES.
- VII. SUBSEQUENT CREDITORS.
- VIII. REMEDIES.

Cancellation of land certificate as fraudulent against creditors, see Land Titles.

Fraudulent preferences, see assignment for creditors; Corporations and Companies VI.; Banks.

Parties in actions to set aside, see Parties.

Annotations.

Deeds; Conveyance absolute in form; Creditor's action to reach undisclosed equity of debtor: 1 D.L.R. 76.

Right of creditors to follow profits: 1 D.L.R. 841.

I. In general.

- (§ I—2)—INSOLVENCY OF GRANTOR—SCHEME TO DEFEAT CLAIMS OF CREDITORS—FINDINGS OF FACT OF TRIAL JUDGE.
Vansickle v. Ratcliffe, 9 O.W.N. 296.

II. Consideration.

(See previous Annual Digests.)

III. Preferences; security.

- (§ III—10)—CHATTEL MORTGAGE — INSOLVENCY.

The insolvency of a debtor is not established where the estimated value of his assets are sufficient, if sold under legal process, to meet all his debts at the time of his execution of a chattel mortgage for money advances, so as to render the transaction an unlawful preference under secs. 40 and 42 of the Assignment Act (Man.). [Davidson v. Douglas, 15 Gr. 347; Rae v. McDonald, 13 O.R. 352; Clarkson v. Sterling, 14 O.R. 460; Empire Sash, etc., v. Maranda, 21 Man. L.R. 605; Bertrand v. Canadian Rubber Co., 12 Man. L.R. 27, followed.]

Richards & Brown v. Leonoff, 24 D.L.R. 180, 25 Man. L.R. 548, 8 W.W.R. 966, 31 W.L.R. 621.

- (§ III—10)—ASSIGNMENT TO SECURE PRESENT ADVANCE AND PRE-EXISTING DEBT — FRAUDULENT PREFERENCE.

Where a creditor receives an assignment of certain assets from a debtor as security for both a present advance and a pre-existing debt, and it appears from the evidence that the present advance was made to enable the creditor to afterwards plead the validity of the assignment under sec. 4 of the Fraudulent Preferences Act; held, that the assignment is invalid both as to the present advance and the pre-existing debt.

Hazell v. Cullen, 20 B.C.R. 603.

IV. Notice; rights and liabilities of purchaser.

- (§ IV—16)—ACTION TO SET ASIDE — INSOLVENCY OF GRANTOR—INTENT TO DEFRAUD ON PART OF GRANTOR—FAILURE TO SHEW KNOWLEDGE OF INSOLVENCY OR INTENT TO DEFRAUD.

Palangio v. Augustino, 9 O.W.N. 244.

V. Reservation of interest; change of possession.

- (§ V—25) — SALE — WRITTEN ACKNOWLEDGMENT AS TO RETAINING TITLE.

Where there has been no delivery of the chattels and there is an absence of consideration on a pretended sale for value as to which each signed a written acknowledgment, the pretended seller in whose possession the acknowledgments were retained is not debarred from setting up his title and property in the chattels by the fact that the pretence of a sale was made up for the purpose of defrauding creditors, if the writing entered into was not in itself effective as a conveyance to transfer the ownership.

Sanders v. Hedman, 23 D.L.R. 833, 9 A.L.R. 18, 8 W.W.R. 664, affirming 18 D.L.R. 481.

VI. Transactions between relatives.

- (§ VI—30)—RES IPSA LOQUITUR—BURDEN OF PROOF.

The principle of *res ipsa loquitur* applies to assignments made between near relations under suspicious circumstances, and when impeached by creditors the burden of proof is upon the defendant to establish by corroborative evidence, other than the testimony of interested parties, the bona fides of the transaction. [Koop v. Smith, 20 D.L.R. 440, 20 B.C.R. 372, reversed.]

Koop v. Smith, 25 D.L.R. 355, 51 Can. S.C.R. 554, 8 W.W.R. 1203.

- (§ VI—30)—CHATTEL MORTGAGE—BONA FIDE ADVANCES.

A chattel mortgage executed by a father to his son for actual bona fide money advances, consisting of a present advance and a previous undischarged mortgage, for the purpose of enabling the mortgagor to pay his debts and continue in business, is within the protection of secs. 44 and 47 of the Assignment Act (Man.), and valid against creditors.

Richards & Brown v. Leonoff, 24 D.L.R. 180, 25 Man. L.R. 548, 8 W.W.R. 966, 31 W.L.R. 621.

- (§ VI—30)—CONVEYANCE BY HUSBAND TO WIFE — RE-CONVEYANCE — RIGHTS OF WIFE'S CREDITORS.

A voluntary conveyance of land by a husband to his wife in anticipation of death, to be re-conveyed to him upon his recovery from his illness, a re-conveyance of the land in pursuance of such arrangement does not render the re-conveyance fraudulent against the execution creditors of the wife.

Windsor Auto Sales Agency v. Martin, 25 D.L.R. 549, 33 O.L.R. 354, 8 O.W.N. 130.

(§ VI—30)—HUSBAND AND WIFE—PRESUMPTION AS TO GIFT—ACCOMMODATION ENDORSEMENT.

In an action to set aside a conveyance as fraudulent, the whole of the circumstances surrounding the execution must be looked at, and then the question asked, whether the conveyance was in fact executed with the intent to defeat and delay creditors. [Koop v. Smith, 7 W.W.R. 416; Elgin Loan Co. v. Orchard, 7 O.L.R. 695; Re Wise, 17 Q.B.D. 290; Dancey v. Brown, 31 O.L.R. 152, and Gregg v. Holland, [1902] 2 Ch. 360 referred to.] Upon the payment of income by a wife to a husband, a presumption arises that such payment is made by way of gift. [Rice v. Rice, 31 O.R., referred to.] The liability on an accommodation endorsement is not a debt, at most it is an obligation, which may in certain circumstances become a debt.

Union Bank v. Tyson, 7 W.W.R. 1117.

(§ VI—30)TRANSACTIONS BETWEEN HUSBAND AND WIFE—IMPEACHMENT BY CREDITORS—PROPERTY PURCHASED WITH WIFE'S EARNINGS.

O'Leary v. Ferguson, 24 D.L.R. 911.

(§ VI—30)—TRANSACTION BETWEEN PARENT AND CHILD—ASSIGNMENT OF SHARE OF DISTRIBUTION—ABSENCE OF INTENT TO DEFRAUD—DELAY IN SETTING ASIDE.

Revillon v. Whalen, 24 D.L.R. 887, 32 W.L.R. 325.

(§ VI—30) — HUSBAND AND WIFE — INSOLVENCY OF HUSBAND — VOLUNTARY CONVEYANCE TO WIFE — PRETENDED CONSIDERATION—EVIDENCE—INTENT.

Long Dock Mills Co. v. Dickey, 7 O.W.N. 692.

(§ VI—30)—HUSBAND AND WIFE—PROPERTY CONVEYED TO WIFE BY STRANGER — INTEREST OF HUSBAND — RIGHTS OF CREDITOR OF HUSBAND—ABSENCE OF FRAUD.

Bateman v. Scott, 7 O.W.N. 722, 8 O.W.N. 256.

[Appeal to Can. Sup. Ct. quashed, March 3, 1916.]

(§ VI—30)—HUSBAND AND WIFE—INTENT TO DEFEAT CREDITORS OF HUSBAND—CLAIM OF CREDITOR AGAINST HUSBAND — CONTRACT—NOVATION—EVIDENCE.

Canadian Pressed Brick Co. v. Cole, 8 O.W.N. 499, 9 O.W.N. 55.

VII. Subsequent creditors.

(§ VII—35)—SURETY.

A surety is within the category of creditors within the purview of the Statute of 13 Elizabeth and the Assignment Act, 1907 (Alta.), ch. 6, sec. 44, in actions to set aside fraudulent conveyances.

Robertson v. Wilson, 24 D.L.R. 274, 8 W.W.R. 1068, 31 W.L.R. 708.

VIII. Remedies.

(§ VIII—40)—PROCEEDINGS UNDER CREDITORS RELIEF ACT — PRIORITIES — MORTGAGES AND EXECUTIONS.

It is not obligatory upon the Court to apply the scheme of distribution under the Creditors Relief Act, R.S.O. 1914, ch. 81, in its entirety to moneys in Court realized in equitable proceedings to set aside a fraudulent conveyance; so where there was a succession of mortgages registered at different dates with groups of executions during each interval, a fund so realized for the benefit of creditors and mortgagees will be distributed with reference to the priorities of the various mortgages, and by grouping the executions which intervened between any two mortgages so that each group of executions as a whole would rank ahead of mortgages afterwards placed on the land. [Roach v. McLachlan, 19 A.R. (Ont.) 496; Breithaupt v. Marr, 20 A.R. 689, followed.]

Union Bank of Canada v. Taylor, 23 D.L.R. 679, 34 O.L.R. 255, 8 O.W.N. 72.

(§ VIII—41)—TO WHOM AVAILABLE—SIMPLE OR JUDGMENT CREDITOR.

Where a creditor is seeking, on behalf of himself and all other creditors, to have a conveyance declared fraudulent and void, it is only necessary to allege and prove that he had a claim against the debtor, and not that the claim had been carried to judgment.

McDermott v. Oliver, 43 N.B.R. 533.

(§ VIII—41)—ACTION BY JUDGMENT CREDITOR TO SET ASIDE — EVIDENCE—ABSENCE OF INTENT TO DEFRAUD — ESTOPPEL—UNREGISTERED RE-CONVEYANCE TO DEBTOR—CANCELLATION—DISMISSAL OF ACTION.

Davidson v. Forsythe, 7 O.W.N. 762.

(§ VIII—41)—ACTION TO SET ASIDE — EVIDENCE—INTENT TO DEFRAUD.

Aspinall v. Diver and Breen, 7 O.W.N. 828.

FRAUDULENT PREFERENCES.

See Fraudulent Conveyances; Insolvency; Assignment for Creditors; Corporations and Companies; Banks.

FREIGHT CARRIERS.

See Carriers, III.

FUGITIVE FROM JUSTICE.

Extradition of, see Extradition.

Arrest of absconding debtor, see Arrest.

Deportation of Aliens, see Aliens.

GAMING.

See also Lottery.

As affecting validity of contract, see Contracts, III.

Annotation.

Lottery offence under Criminal Code: 25 D.L.R. 401.

(§ I—6)—PREMIUM SLOT MACHINES — GUM-VENDING.

Where there is evidence justifying the

magistrate in finding that a slot machine used for vending gum is a mere subterfuge and a pretence and that the real object of the owners of the machine was to get the customer to continue to play the machine in the hope of winning certain discs given gratis with the gum at irregular intervals and which would be taken in lieu of cash for goods at the tobacco store where the slot machine was operated and that the disc feature of the machine was, by reason of the possibility of a comparatively large return from the play, the incentive for placing money in the slot, a conviction under Code sec. 228, may be supported for keeping a common gaming house in maintaining for gain the place to which persons resorted for the purpose of playing at a game of chance. [But see contra, *R. v. Langlois*, 23 Can. Cr. Cas. 43.]

Rex v. Stubbs, 21 D.L.R. 541, 24 Can. Cr. Cas. 60, 31 W.L.R. 109.

[Reversed in 25 D.L.R. 424, 24 Can. Cr. Cas. 303, 9 A.L.R. 26; approved in *R. v. O'Meara*, 25 D.L.R. 503, 25 Can. Cr. Cas. 16, 34 O.L.R. 467.]

(§ I-6) — GUM-VENDING MACHINE — PREMIUMS.

A person does not keep a common gaming house under Cr. Code secs. 228 and 986, because of the maintenance of a chewing-gum vending machine with a varying premium feature automatically operated in connection therewith whereby the exact result of the next operation of the machine is indicated immediately following its last operation; the fact that the inducement is thereby held out that in some future play of the machine the operator may receive something more than an adequate return for his money, does not introduce the element of chance essential to constitute the crime. [*Rex v. Stubbs*, 21 D.L.R. 541, reversed; *R. v. Langlois*, 13 Can. Cr. Cas. 43, referred to.]

Rex v. Stubbs, 25 D.L.R. 424, 24 Can. Cr. Cas. 303, 8 W.W.R. 902, 9 A.L.R. 26.

[Disapproved in *R. v. O'Meara*, 25 D.L.R. 503, 25 Can. Cr. Cas. 16, 34 O.L.R. 467.]

(§ I-6)—AUTOMATIC GUM VENDING MACHINE —FREE TRADE CHECKS WITH PURCHASES.

An automatic vending machine is properly held to be a contrivance for unlawful gaming where, in addition to the chewing gum or other article obtainable from the machine on deposit of a coin, there is issued in some cases along with the article purchased one or more trade checks redeemable in goods at the store where the machine is kept and which may at the customer's option be replayed into the machine on the chance of more trade checks or a blank; the element of gaming remains notwithstanding the fact that the number of trade checks, if any, at the next operation of the machine is indicated in advance to the person using it, as, in addition to the fixed quantity of chewing gum given for the five cent coin, the operator obtains the opportunity of winning the trade checks indicated and the benefits incident

thereto or in case of drawing a blank with his purchase he received the benefit of a fresh turn of the indicator and the chance that the machine would indicate trade checks along with the next purchase were he to repeat the operation with another coin. [*R. v. Langlois*, 23 Can. Cr. Cas. 43; *R. v. Stubbs* (No. 2), 25 D.L.R. 424, 24 Can. Cr. Cas. 303, disapproved; *R. v. Stubbs* (No. 1), 21 D.L.R. 541, approved.]

Rex v. O'Meara, 25 D.L.R. 503, 25 Can. Cr. Cas. 16, 34 O.L.R. 467, 9 O.W.N. 72.

(§ I-15)—COMMON GAMING HOUSE — AUTOMATIC VENDING MACHINE WITH GAMING FEATURE.

A charge of keeping a common gaming house is maintainable against the proprietor of a cigar store who keeps in the store an automatic gum vending machine operated as a nickel-in-the-slot device where the machine issues trade checks along with certain purchases and not with others, in such a manner as to constitute a contrivance for unlawful gaming, if the keeper of the store was entitled to a share of the profits from the operation of the machine although the machine belonged to another who alone had the keys with which to open it.

Rex v. O'Meara, 25 D.L.R. 503, 25 Can. Cr. Cas. 16, 34 O.L.R. 467, 9 O.W.N. 72.

(§ I-15)—COMMON GAMING HOUSE — CONTRIVANCE FOR GAMING FOUND ON PREMISES.

Semble, that the Cr. Code, sec. 986, as amended 1913, has the effect of making it *prima facie* evidence that a room or place is a common gaming house if it is found fitted or provided with any means or contrivance for unlawful gaming, by a constable who enters by consent of the proprietor and without any search warrant or order under Cr. Code, sec. 641, as amended 1913; and it is not necessary for the prosecutor to prove there was any resorting to the place (Cr. Code, sec. 226 (a)) as part of their *prima facie* case where the provisions of Cr. Code, sec. 986, apply.

Rex v. O'Meara, 25 D.L.R. 503, 25 Can. Cr. Cas. 16, 34 O.L.R. 467, 9 O.W.N. 72.

GARAGE.

See Automobiles, V.

GARNISHMENT.

I. WHEN GARNISHMENT LIES.

- A. In general, before recovery of judgment.
- B. Against whom.
- C. What subject to garnishment.
- D. Situs of debts.

II. EFFECT; RIGHTS, DUTIES, AND LIABILITIES OF GARNISHEE.

- A. In general.
- B. Duty as to exemptions; effect of failure to set up.
- C. Effect of judgment.
- D. Effect of payment.
- E. Priorities.

III. PROCEDURE.

See also Attachment; Execution.

I. When garnishment lies.

A. IN GENERAL, BEFORE RECOVERY OF JUDGMENT.

(\$ I A-1)—LIQUIDATED DEMAND — LIQUIDATED DAMAGES OR PENALTY.

Upon a summary application to set aside a garnishee summons the question whether the sum of money agreed to be payable as "liquidated damages" was or was not in its essence a "penalty" should not be entered into.

International Supply Co. v. Black Diamond Oil Fields, 8 W.W.R. 475.

C. WHAT SUBJECT TO GARNISHMENT.

(\$ I C I-18)—INSURANCE MONEY.

Under Manitoba K.B. Rules 759 and 761, the claim of the assured under a policy of fire insurance which provided that the loss should not be payable until after thirty days after the completion of the proofs of loss, cannot be attached by garnishing order before completion of the proofs of loss. [Lake of the Woods Milling Co. v. Collin, 13 Man. L.R. 154, followed; Jureidini v. National British, etc., Co., [1915] A.C. 499, referred to.]

Brookler v. Security National Ins. Co. of Can., 23 D.L.R. 595, 25 Man. L.R. 537, 8 W.W.R. 861, 31 W.L.R. 460.

II. Effect; rights, duties, and liabilities of garnishee.

A. IN GENERAL.

(\$ II A-35)—ATTACHMENT OF DEBTS—GARNISHEE DISPUTING LIABILITY — ORDER DIRECTING TRIAL OF ISSUE—APPEAL.

Bank of Montreal v. McAlpine, 8 O.W.N. 402.

D. EFFECT OF PAYMENT.

(\$ II D-50) — PAYMENT INTO COURT — DISTRIBUTION UNDER CREDITORS' RELIEF ACT.

Money paid into the Supreme Court under a garnishee summons and ordered to be paid out under the Rules of Court is not subject to the orders of a Judge of the District Court to pay the money to the sheriff under the Creditors' Relief Act (Sask.).

Royal Bank of Canada v. Lee & Girard, 23 D.L.R. 219, 8 S.L.R. 17, 8 W.W.R. 338, affirming 23 D.L.R. 216.

(\$ II D-50)—PAYMENT INTO COURT BY GARNISHEE—DEFENCE OF—RIGHTS OF UNPAID VENDOR OF GOODS—DISPOSITION AS TO COSTS.

Saskatoon Hardware Co. v. Priel, 22 D.L.R. 911, 32 W.L.R. 1.

E. PRIORITIES.

(\$ II E-55)—PRIORITY OF FIRST ATTACHING CREDITOR—CREDITORS' RELIEF ACT.

The right of a judgment creditor to an order for payment into Court by a garnishee and payment out to himself after having served an attaching order on the garnishee is not affected by attaching orders subsequently served on the garnishee. [Robert Ward & Co. v. Wilson, 13 B.C.R. 273, not followed.]

Slinger v. Davis, 20 B.C.R. 447.

(\$ II E-55) — ATTACHMENT OF DEBTS — CLAIM ARISING AFTER SERVICE OF ATTACHING ORDER.

Black v. Hohlstens, 9 O.W.N. 5.

III. Procedure.

(\$ III-61)—DEFECTIVE AFFIDAVIT.

The omission in an affidavit for a garnishee summons before judgment under the Sask. Rules of Court to shew in what capacity whether as plaintiff, solicitor or agent for the plaintiff, the deponent makes his affidavit, is a ground for setting aside a garnishee summons issued thereon; the summons was a nullity as there was no proper affidavit and the defect in the latter was not a mere irregularity.

McGillivray v. Beamish, 23 D.L.R. 324, 8 S.L.R. 9, 7 W.W.R. 1188.

(\$ III-61)—STOP ORDER—AFFIDAVIT SHewing NATURE OF CLAIM—GENERAL CREDITOR.

An ordinary creditor, i.e., one not having any "title" to money paid into Court under a garnishee summons, cannot apply under r. 646 for a stop order. An affidavit in support of a garnishee summons must shew the nature of the claim. The omission to do so is more than an irregularity capable of being cured under r. 273. [Mohr v. Parks, 15 W.L.R. 250, and McGillivray v. Beamish, 7 W.W.R. 1188, referred to.]

Smith v. Metzger, 7 W.W.R. 1386.

(\$ III-61)—CONTENTS OF AFFIDAVIT — ENDORSEMENT—STATING NATURE OF EMPLOYMENT—AMENDMENT.

The omission to endorse on an affidavit leading to the issue of a garnishee summons a statement shewing on whose behalf it is filed is a mere irregularity curable by amendment. The requirement that the capacity in which defendant is employed must be stated in the affidavit is for the benefit of the garnishee-employer, and the omission of the statement cannot be complained of by the defendant.

Hart v. Greer (No. 2), 9 W.W.R. 709, 33 W.L.R. 41.

(\$ III-66)—NON-APPEARANCE OF GARNISHEE — PRESUMPTIONS AS TO LIABILITY.

Where a garnishee fails to appear to a garnishee summons under the Saskatchewan Practice, his failure raises against him and in favour of the creditor the presumption that he owes the debtor the amount of the claim sued for, but such failure cannot be

considered an admission of liability as against any one except the creditor in the particular case in which he failed to appear. [Dickson v. Van Hummell, 16 D.L.R. 774, considered.]

Shierman v. Harris and Craske, 22 D.L.R. 694, 8 S.L.R. 165, 8 W.W.R. 514.

(§ III—68)—LIQUIDATED DEMAND — AGREEMENT FOR AMOUNT OF DAMAGES FOR INJURIES TO ANIMALS—SUFFICIENCY OF PLEADING.

Lloyd v. Ashdown, 22 D.L.R. 919, 8 S.L.R. 217, 32 W.L.R. 11.

GAS.

- I. IN GENERAL.
- II. COMPULSORY SERVICE.
- III. RATES; METER.
- IV. INJURIES FROM; NEGLIGENCE AS TO.
 - a. In general.
 - b. Contributory negligence.

Municipal franchises as to, see Municipal Corporations.

Negligence in general, see Negligence.

Gas leases, see Mines and Minerals.

I. In general.

(§ I—1)—STATUTORY REGULATION — PUBLIC HEALTH OR SAFETY.

The statutory provision that a gas company shall locate and construct its gas works and all apparatus and appurtenances thereto belonging or appertaining or therewith connected and wheresoever situated so as not to endanger the public health or safety intends to provide that the works shall be so located and constructed that no danger to the health or safety of the individuals making up the general mass known as the public shall ensue either during the location, construction or operation of the works. [Midwood v. Manchester, [1905] 2 K.B. 579, and Charing Cross v. London Hydraulic, [1913] 3 K.B. 442, applied.]

Raffan v. Canadian West. Natural Gas, etc., Co., 8 W.W.R. 676.

II. Compulsory service.

III. Rates; meter.

(See previous Annual Digests.)

IV. Injuries from; negligence as to.

A. IN GENERAL.

(§ IV A—16)—ESCAPE OF—LIABILITY.

The owner of a gas works in connection with which gas pipes are laid under city streets is not liable for the escape of gas without his knowledge through the breaking of a street gas pipe by a third party not under his control, the consequence of whose act the defendant could not reasonably have anticipated. [Rickards v. Lothian, [1913] A.C. 263, 278; Charing Cross v. London Hydraulic, 83 L.J.K.B. 1352, [1914] 3 K.B. 772; Rylands v. Fletcher, 3 H.L. 330, referred to.]

Tidy v. Cunningham, 22 D.L.R. 151, 21 B.C.R. 53, 7 W.W.R. 1205, 30 W.L.R. 547.

GIFT.

- I. IN GENERAL.
- II. CAUSA MORTIS.
- III. DELIVERY.

As to trust generally, see Trusts.

By will, see Wills.

Annotation.

Necessity for delivery and acceptance of chattel: 1 D.L.R. 306.

I. In general.

(§ I—4)—DELIVERY OF TRANSFER AND DUPLICATE CERTIFICATE — REVOCATION — REPOSSESSION OF TRANSFER BEFORE REGISTRATION—TITLE.

Smith v. Smith, 21 D.L.R. 861, 8 W.W.R. 1077, 31 W.L.R. 607.

II. Causa Mortis.

(§ II—10)—ESTATE OF INTESTATE—EVIDENCE — CORROBORATION — DISCRETION OF TRIAL JUDGE—APPEAL.

Trusts and Guarantee Co. v. Smith, 8 O.W.N. 587.

(§ II—12)—MARRIAGE CONTRACT—DONATION MORTIS CAUSA—GIFT INTER VIVOS—ACCEPTANCE.

The future consorts may by their marriage contracts respectively make to each other, or one to the other, or to their future children, donations of property as well existing as to be acquired the acceptance of which is to be inferred and presumed as well with respect to the consorts as to their prospective children, but they are not allowed to make to other persons donations of property to be acquired in the future. On account of the favour with which marriage is regarded and of the interest which the future consorts should have in the arrangements made in favour of third parties, it is lawful for the ascendants of the future husband to make, in the marriage contract, donations mortis causa to his brothers and sisters of the husband who is also benefitted by it, but other donations mortis causa in favour of third parties are void. Although the donation inter vivos binds the donor, and has effect only, on account of its acceptance, such acceptance is presumed in a marriage contract as well in regard to the consorts as to the children to be born.

Tassé v. Goyer, 47 Que. S.C. 424.

III. Delivery.

(§ III—16)—SUFFICIENCY OF DELIVERY—VERBAL AGREEMENT FOR POSSESSION.

Gift of moveable property by verbal agreement is valid only when possession is given by the donor to the donee; and the common, private and equivocal possession of movables by a daughter whilst she was living alone with her father is not sufficient

to admit verbal evidence of manual gift between them.

Hammond v. Nesom, 47 Que. S.C. 179.

GOODS.

Sale of, see Sale; Bills of Sale.

Chattel mortgage of, see Chattel Mortgage.

Contracts generally as to, see Contracts.

GOODWILL.

Of partnership, see Partnership.

(§ III—10)—SALE OF BUSINESS—CANVASSING CUSTOMERS—INJUNCTION—DAMAGES.

Stewart v. Calbert, 8 O.W.N. 437.

GOVERNMENTAL CONTROL.

Of carriers, see Carriers, IV; Railways; Shipping.

Of corporations, see Corporations and Companies.

Of lands, see Public Lands; Mines and Minerals.

GOVERNOR.

(§ I—1)—PREROGATIVE POWERS OF LIEUTENANT-GOVERNOR—COMMISSIONS.

The Lieutenant-Governor-in-Council, as the chief executive officer, has the prerogative power under the constitutional Acts, and under the Inquiries Act (Man.), to appoint investigation commissions and to clothe them with special powers to compel the attendance of witnesses and production of documents.

Kelly & Sons v. Mathers, C.J.K.B., 23 D.L.R. 225, 25 Man. L.R. 580, 8 W.W.R. 1208, 31 W.L.R. 931, 32 W.L.R. 33.

(§ I—1)—INVESTIGATION COMMISSIONS—CONSTRUCTION OF PARLIAMENT BUILDING.

The appointment of a commission by the Lieutenant-Governor-in-Council to investigate certain matters relating to the construction of a new Parliament building conforms to the powers enumerated in the Inquiries Act, R.S.M., ch. 34, respecting commissions to any matter connected with the good government of the province.

Kelly & Sons v. Mathers, C.J.K.B., 23 D.L.R. 225, 25 Man. L.R. 580, 8 W.W.R. 1208, 31 W.L.R. 931, 32 W.L.R. 33.

(§ I—1)—POWERS OF LIEUTENANT-GOVERNOR—SUSPENSION OF ACTIONS BECAUSE OF WAR—CLASS PROCLAMATIONS—LIQUOR LICENSEES.

Chapter 2 of statutes 1914 (Sask.), authorizing the Lieutenant-Governor-in-Council to prohibit the issue of processes in all or any classes of civil actions, for the protection of persons whose interests may be jeopardized during a state of war, a proclamation prohibiting the taking of actions by creditors against liquor licensees as a class, whose interests are affected by the closing of bars for the proclaimed period, is not ultra vires and in conformity to the

spirit of the statute. [Bywater v. Brandling, 7 B. & C. 643, applied.]

Imperial Elevator & Lumber Co. v. Kuss, 25 D.L.R. 55, 8 S.L.R. 360, 9 W.W.R. 606, 32 W.L.R. 941, varying 9 W.W.R. 164, 32 W.L.R. 378.

[Followed in Miller v. Kuss, 25 D.L.R. 816.]

GRAND JURY.

Indictment by, see Indictment, Information and Complaint; Criminal Law.

GUARANTY.

I. VALIDITY; CONSTRUCTION; EFFECT.

II. REVOCATION; CONDITION; DISCHARGE.

As to Statute of Frauds, see Contracts, IE.

As to suretyship, see Principal and Surety. Of fidelity, see Bonds.

I. Validity; construction; effect.

(See previous Annual Digests.)

II. Revocation; condition; discharge.

(§ II—12)—INCREASE OF LIABILITY—WHEN NO GROUND FOR DISCHARGE—INDEFINITE-NESS OF CONTRACT—SEALED INSTRUMENT—ALTERATION.

The defendant signed two guaranties in favour of the plaintiffs. The first was under seal, and was to operate upon the formation of a new company to take over the business of two other tire companies. The second writing was dated 20 days later, and was not under seal. It was in the form of a letter, addressed to the plaintiffs, stating that the defendant understood that a new company was not to be incorporated, and that "our agreement will hold good" for the K. company, one of the two existing tire companies, "just as if you had incorporated a new company." The plaintiffs bought control of the K. company, which had previously taken over the assets and assumed the liabilities of the other tire company; and the K. company, with a new directorate, made an agreement with the plaintiffs by which the former should have the exclusive agency in Quebec for certain goods controlled by the plaintiffs. The amount to be paid for this exclusive agency was \$13,350, which was to be satisfied by the transfer to the plaintiffs of 91 shares of the K. company and the payment of \$4,250, and promissory notes for the \$4,250 were made by the K. company in favour of the plaintiffs:—Held, upon the evidence, that the arrangement by which the K. company purchased the agency for \$4,250 was a device by which the plaintiffs were to be recouped out of the profits of the business for the amount paid out to acquire control of the stock of the K. company; but that did not affect the liability of the defendant. It was said that this increase in the liabilities of the K. company changed the basis of the defendant's contract, and so released him;

but the basis of the contract was not fixed and definite; nothing was done to prejudice the defendant; there was no deliberate concealment; there is no universal obligation to make disclosure in cases of guaranty; and the defendant was not released. (*Holme v. Brumskill*, 3 Q.B.D. 495, distinguished. *Stewart v. McKean*, 10 Ex. 675, *Webster v. Petre*, 4 Ex. D. 127; *Stewart v. Young*, 38 Sol. J. 385; and *Davies v. London and Provincial Marine Ins. Co.*, 8 Ch. D. 469, applied and followed.) (2) The words of the later guaranty "just as if you had incorporated a new company" meant "to the full extent contemplated in case a new company had been incorporated," and substituted another state of affairs, upon the completion of which the earlier guaranty became effective; and the later guaranty was not limited to so much of the earlier one as dealt with the indebtedness of the K. company recited therein. (3) A guaranty need not be under seal; and quære whether the rule that an attempted alteration of a contract under seal by an instrument not sealed is ineffective, is applicable where the original contract does not require a seal to make it valid. (4) The guaranties did not cover the notes given for the acquisition of the exclusive agency; the contract of guaranty is *strictissimi juris*.

K. & S. Auto Tire Co. v. Rutherford, 34 O.L.R. 639, 9 O.W.N. 214.

(§ II—12)—ACTION ON — DEFENCE—FRAUD—EVIDENCE—FINDING OF FACT OF TRIAL JUDGE.

Union Bank v. Makepeace, 9 O.W.N. 202.

GUARDIAN AND WARD.

- I. APPOINTMENT; REMOVAL; DISCHARGE.
- II. POWERS, RIGHTS, DUTIES, AND LIABILITIES OF GUARDIAN.
- III. BONDS AND LIABILITY THEREON.
- IV. RIGHTS OF WARD.

Guardianship relating to infancy in general, see *Infants*.

- I. Appointment; removal; discharge.
(See previous Annual Digests.)

II. Powers, rights, duties, and liabilities of guardian.

(§ II—11)—MAINTENANCE OF INFANT OUT OF FUNDS IN HANDS OF GUARDIAN—POWER OF COURT TO AUTHORIZE PAYMENT TO MOTHER.

The Court has power to enforce the duty of any guardian or other trustee to maintain and educate infant children according to their needs and means; and has power over the person and property of an infant, which power ought to be freely exercised for the benefit of the infant whenever necessary. An order was made by a Judge in Chambers, upon the application of the mother of two infants (girls), who resided with her, authorizing the guardians of the infants to pay to the applicant, out of the infants' moneys in

their hands—largely out of the corpus, the income being insufficient—the same allowance for the infants' maintenance and education that had been paid for a limited time under a previous order, so long as past conditions as to maintenance and education should continue, up to the time of each infant, respectively, attaining the age of 21 years or marrying. *Re Carnahan*, 4 O.W.N. 115, where a doubt was expressed as to the practice in regard to orders for the maintenance of infants considered. It was held that the application was regularly made at Chambers, by way of originating notice of motion; and equally so whether the guardians were assenting or dissenting, there being no question involved respecting the power of the Court, or the right of the infants to the property in question: the *Infants Act*, R.S.O. 1914, ch. 153, sec. 31 (2).

Re Adkins Infants, 33 O.L.R. 110, 7 O.W.N. 654.

(§ II—11)—CURATOR OF ABSENTEE—RIGHT TO CLAIM SUCCESSION—DISBURSEMENTS BY.

A curator to the property of an absentee, who cannot prove that he was alive at the time of the opening of the succession to which he is substitute, has no right to claim the succession in the name of the absentee or to retain it against those who are called upon to succeed him. A curator who, with no right to do so, has taken possession in the name of the absentee of immovables devised to him and has made out of his own money useful and necessary disbursements, cannot by a plea filed in his capacity of curator claim the amount of these disbursements nor avail himself of the right to retain the property.

Picard v. Picard, 48 Que. S.C. 316.

III. Bonds and liability thereon.

IV. Rights of Ward.

(See previous Annual Digests.)

HABEAS CORPUS.

I. IN PROVINCIAL COURTS.

- A. In general.
- B. Power to issue; who may demand.
- C. Scope of writ; questions considered; right to discharge.
- D. Procedure; judgment.

II. IN SUPREME COURT OF CANADA.

Scope of review of proceedings on appeal. see *Appeal*.

Summary convictions generally, see *Certiorari*; *Summary Convictions*.

Annotation.

Habeas corpus, procedure: 13 D.L.R. 722.

I. In provincial Courts.

A. IN GENERAL.

(§ I A—2)—INTERMENT OF ALIEN ENEMY—REVIEW.

The judgment of a registrar of alien

enemies as to the necessity of the internment of a resident alien enemy under the War Measures Act, 1914, and under the statutory regulations made thereunder, is not subject to review by the Courts on habeas corpus without the consent of the Minister of Justice. [Re Beranek, 24 Can. Cr. Cas. 252, followed.]

Re Gusetu; Gusetu v. Date, 24 Can. Cr. Cas. 427, 17 Que. P.R. 95.

(§ I A—2)—ALIEN ENEMIES—MILITARY CUSTODY.

A prisoner held in military custody as an alien enemy must have the consent of the Minister of Justice before he can claim to be released in habeas corpus proceedings in support of which he adduces proof that he is a British subject by naturalization; he cannot be released upon bail or otherwise discharged or tried without the consent of the Minister of Justice under the War Measures Act, 1914, 5 Geo. V., Can., ch. 2.

Re Beranek, 25 D.L.R. 564, 24 Can. Cr. Cas. 252, 33 O.L.R. 139, 7 O.W.N. 719.

B. POWER TO ISSUE; WHO MAY DEMAND.

(§ I B—7)—ALIEN ENEMIES.

An alien enemy has no right at common law to a writ of habeas corpus. [R. v. Schiever, 97 Eng. R. 551, followed.]

Re Gusetu; Gusetu v. Date, 24 Can. Cr. Cas. 427, 17 Que. P.R. 95.

C. SCOPE OF WRIT; QUESTIONS CONSIDERED; RIGHT TO DISCHARGE.

(§ I C—10)—PROCEEDINGS UNDER BASTARDY ACT.

It is not a ground for discharge on habeas corpus where the accused was arrested for default under a filiation order under R.S.N.S. 1900, ch. 51, that no depositions had been taken in the filiation proceedings, if he had consented to the filiation order for he thereby effectively waived the taking of evidence. [Re Piers, 44 N.S.R. 254, referred to.]

Rex v. Locke, 24 Can. Cr. Cas. 337.

(§ I C—10)—EXEMPTION FROM CIVIL ARREST UNDER ARMY ACT—SOLDIER ON ACTIVE SERVICE—THE BASTARDY ACT, R.S.N.S., CH. 51.]

Ex parte Hughes, 24 D.L.R. 898, 24 Can. Cr. Cas. 222.

(§ I C—12a)—COMMITMENT—BASTARDY—FORM OF WARRANT.

A warrant of commitment in default, which is drawn in strict conformity with a statutory form, will not be set aside on habeas corpus, although it does not fix the costs of conveying to gaol which the defendant must pay as a condition of his release; so a commitment in default of giving security in filiation proceedings under the Illegitimate Children's Act, R.S.M. 1913, ch. 92, is valid if issued in form 10 of that Act for the term of six months or until defendant gives the statutory bond or makes

the cash deposit and pays "the costs and charges attending the commitment and conveying to gaol."

Rex v. Book, 25 Can. Cr. Cas. 89.

(§ I C—12a)—COMMITMENT IN DEFAULT OF FINE.

When a warrant for commitment to jail in default of paying a fine has been issued with an overcharge in the costs of conveyance to the common jail, it will be quashed on habeas corpus and the prisoner discharged as the warrant is indivisible.

Ex parte Msadaquis, 24 Can. Cr. Cas. 384, 16 Que. P.R. 26.

(§ I C—14)—PROCEEDINGS FOR CUSTODY OF CHILD—PROCEDURE.

An application for a writ of habeas corpus to obtain the custody of an infant cannot be renewed before any Judge while there is an order pending of another Judge that no application shall be made by the petitioner until the infant attains the age of 7 years unless, if under the practice rules 9 and 10 adopted by sec. 34 of the Infants Act (Alta.), 1913, ch. 13, such Judge is unavailable, another Judge may exercise his jurisdiction. [Re Holt, 16 Ch. D. 115, followed.]

Re Davies, 25 D.L.R. 96, 9 W.W.R. 361, 32 W.L.R. 716.

(§ I C—15)—POWERS OF AMENDING COMMITMENT—COSTS.

Where it appears that several commitments in default of paying fines imposed for infraction of the Canada Temperance Act were all actually executed at the one time, the Court hearing a habeas corpus application may amend the commitments by striking out of all but one of them the costs of conveying the prisoner to gaol which had been included in each commitment; but semble the commitments would not be bad in that respect, inasmuch as the magistrate could not foretell that all the commitments would be executed at once.

Ex parte Richard, Rex v. Steeves, 24 Can. Cr. Cas. 183, 42 N.B.R. 596.

(§ I C—16b)—PRELIMINARY INQUIRY ON ANOTHER CHARGE.

A prisoner convicted by a magistrate on a summary trial and remanded for sentence to a fixed date may be brought up in the meantime for preliminary inquiry upon another criminal charge by means of a writ of habeas corpus ad respondendum ordered by a Superior Court on the prosecutor's application. [Ex parte Griffiths, 5 B. & A. 730, followed; N.S. Crown Rule 157, referred to.]

Rex v. Henry, 25 Can. Cr. Cas. 86.

D. PROCEDURE; JUDGMENT.

(§ I D—20)—RETURN—OATH.

It is not necessary, though it may be customary, for a gaoler to make his return under oath in answer to a writ of habeas corpus.

Ex parte Evans, 48 Que. S.C. 469.

HANDWRITING.

Opinion evidence as to, see Evidence, VII.

Annotation.

Comparison of; When and how comparison to be made: 13 D.L.R. 565.

HARBOURS.

See also Waters.

(§ I—2)—**POWERS OF HARBOUR COMMISSIONERS—DEDICATION OF LAND TO MUNICIPALITY.**

The Harbour Commissioners of Montreal have only the administration of the properties in their possession, the ownership pertaining to the Crown. They have then no right to make a donation of part of their land to a municipal corporation even for the purpose of enlarging a public street.

Chars Urbains v. Commissaires du Havre, 24 Que. K.B. 503.

(§ I—5)—**BAYS—PROPERTY IN BED AND FORESHORE—CROWN AND PROVINCE.**

English Bay is not a public harbour within the meaning of sec. 108 of the B.N.A. Act, and the bed and foreshore thereof (which includes the Spanish Banks) are the property of the Crown in the right of the province. Per Irving, J.A.: The width of its mouth, having regard to its area, prevents it falling within the definition of harbour, and should be described as a roadstead. Decision of Macdonald, J., affirmed.

Atty.-Gen. of Canada v. Ritchie Contracting, etc., Co., 20 B.C.R. 333, affirming 17 D.L.R. 778, 6 W.W.R. 640, 28 W.L.R. 59.

[Affirmed in 26 D.L.R. 51 (annotated), 52 Can. S.C.R. 78.]

HAWKERS.

As to by-law relating to, see Municipal Corporations, II; License.

HEALTH.

Representations as to, application for insurance, see Insurance.

Nuisance as to health, see Nuisance.

Vaccination of school children, see Schools.

(See also previous Annual Digests.)

HEARSAY.

As to hearsay evidence, see Evidence.

HEIR.

As to descent and distribution to, see Descent and Distribution.

Distribution to, see Executors and Administrators, IV.

Devise in favour of, see Wills.

HIGHWAYS.**I. ESTABLISHMENT; WIDTH.****A. Establishment.****B. Width.****II. TITLE; USE; OBSTRUCTION.**

A. In general; title and property rights.

B. Uses; what allowed in street generally.

C. Obstruction generally.

D. Use and obstruction by railroads.

E. Rights as to trees or materials in street.

III. IMPROVEMENTS; DIVERSION; CHANGING GRADE.**IV. DEFECTS; LIABILITY FOR INJURIES TO TRAVELLERS.**

A. Liability of municipality.

B. Liability of others.

C. Contributory negligence.

D. Notice.

V. DISCONTINUANCE; ALTERATION; ABANDONMENT.

A. Discontinuance.

B. Alteration.

C. Abandonment.

VI. HIGHWAY OFFICERS.

As to dedication, see Dedication.

Municipal by-laws regulating use of highways, see Municipal Corporations, III.

Use and obstruction of streets by street railways, see Street Railways.

Use of automobiles on, see Automobiles.

As to bridges, see Bridges.

Negligence on, generally, see Negligence.

Annotations.

Establishment by statutory or municipal authority; Irregularities in proceedings for the opening and closing of highways: 9 D.L.R. 490.

Defects; Notice of injury; Sufficiency: 13 D.L.R. 886.

Duties of drivers of vehicles crossing street railway tracks: 1 D.L.R. 783.

I. Establishment; width.**A. ESTABLISHMENT.**

(§ I A—1)—**SURVEY—ALTERATION OF STREET LINES.**

The special survey which the Attorney-General may direct at the request of a municipal council under the Special Surveys Act, Sask., 3 Geo. V. ch. 24, applies only for the correction of errors; and to justify the acceptance of a new survey altering the street lines it must be shewn that there was an error in those lines and that they did not carry out the intention of the former owner on whose behalf the original survey was made or that the expressed intention leads to an absurdity. [*Smith v. Millions*, 16 A.R. (Ont.) 140, referred to.]

Smith v. The Master of Titles, 21 D.L.R. 47, 8 S.L.R. 47, 7 W.W.R. 1105, 32 W.L.R. 22.

(§ I A—1) — **BORDER ROAD — ADJOINING LANDS—USAGE.**

It has always been the usage, if not the law, in this province, from time immemorial, when a border road between two properties is opened, the necessary land for

the building of such road is one-half from each of the two adjoining properties.

Cormier v. Vaillant, 24 Que. K.B. 161.

(§ I A—2)—BY PRESCRIPTION OR USER—DEDICATION.

A public road was established by process-verbal in 1808. The municipal council, in 1856, directed by by-law that this should be a private road to be used and maintained by the two owners of the lands from which the road had been taken. Nevertheless the public continued to use it without molestation for more than ten years. In these circumstances this public use has made it a public road. The road was not abolished by the by-law of 1856 in the sense of art. 753, M.C., and the ownership of the land did not return to the original proprietors, as provided in that article. It follows, therefore, that one of these proprietors had no right to close this road and cultivate the ground. *Per Carroll, J.*: The prescription for roads open to the public for ten years provided for by 18 Vict. (1855), ch. 100, sec. 9, is based upon the presumption that a competent authority has so directed, but no order of such authority has been produced. Moreover, this prescription does not apply when such competent authority has formally declared that the road is not public. For a road to become public by dedication, expressed or implied, it is necessary that the intention of the owner to give his land for a road or a street should be established by evidence; it is necessary also that, to be effective, this dedication should be accepted by competent authority at least tacitly.

Nolin v. Gosselin, 24 Que. K.B. 289.

(§ I A—7)—DEDICATION—BY-LAW OF MUNICIPALITY—WAIVER OF CONVEYANCES—EVIDENCE.

Reaume v. City of Windsor, 7 O.W.N. 647, 506.

II. Title; use; obstruction.

(See previous Annual Digests.)

III. Improvements; diversion; changing grade.

(§ III—100)—CONSTRUCTION OF HIGHWAY ACROSS RAILWAY—MUNICIPAL LIABILITY AS TO COSTS.

The opening of a highway across the lands taken for right-of-way of a railway company is a new public right over it, and the cost of its construction and maintenance should be borne by the applicant municipality.

Village of Mont Laurier v. C.P.R. Co., 18 Can. Ry. Cas. 387.

(§ III—100)—CARRYING SUBWAY UNDER RAILWAY—LIABILITY OF MUNICIPALITY AS TO COSTS.

The well-defined policy of the Board in cases where there is no evidence of any dedication of a way of communication to the public by a railway company across its tracks, is that the entire expense of grade separation necessary to carry the subway under the existing tracks of a railway com-

pany should be borne by the applicant municipality. [*Village of Weston v. G.T. and C.P.R. Cos.* (Denison Avenue Crossing Case), 7 Can. Ry. Cas. 79; *Town of St. Pierre v. G.T.R. Co.* (Simplex Avenue Crossing Case), 13 Can. Ry. Cas. 1; *Montreal v. C.P.R. Co.*, 18 Can. Ry. Cas. 50, followed.]

City of Lachine v. G.T.R. Co., 18 Can. Ry. Cas. 385.

(§ III—100)—CONSTRUCTION OF SUBWAY UNDER RAILWAY—SENIOR AND JUNIOR RULE—APPORTIONMENT OF COST.

A street having been opened across the right-of-way of the respondent, the applicant was given permission by the Board to construct and maintain a subway under the railway at its own expense and the respondent, under the senior and junior rule, was not ordered to contribute to the expense, but if the applicant agrees to close a neighbouring street, notwithstanding this rule and that the equities as well as the title are in the respondent's favour, the cost of the subway will be apportioned equally between the applicant and respondent.

City of Winnipeg v. C.P.R. Co., 18 Can. Ry. Cas., 381.

(§ III—100)—CONSTRUCTION OF SUBWAY BENEATH RAILWAY—POWER OF MUNICIPALITY.

The city of Regina has, by virtue of R.S.S., ch. 84, sec. 184, power to construct a subway beneath a railway track. [*Forster v. Medicine Hat*, 3 W.W.R. 618, dissented from.] (Semble.) A by-law authorizing the construction of the subway is unnecessary. [*Vernardin v. North Dufferin*, 19 Can. S.C.R. 618, referred to.]

Armour v. City of Regina, 8 S.L.R. 368, 9 W.W.R. 928.

(§ III—100)—TOWNSHIP LINE—DEVIATION—MUNICIPAL ACT, SECS. 455, 458—EVIDENCE—LIABILITY FOR MAINTENANCE—ARREARS—DEMAND—FUTURE MAINTENANCE—JOINT LIABILITY—SETTLEMENT OF PROPORTIONS—DECLARATORY JUDGMENT—COSTS.

Tp. of Ephrasia v. Tp. of St. Vincent, 9 O.W.N. 273.

(§ III—104)—MUNICIPALITY RAISING ROADWAY—DITCH—DANGER—GUARD.

Where a municipality, in order more easily to perform its duty to repair, raises the roadway or lowers a ditch across it so as to create a substantial danger, it is its duty to provide a guard (ex. gr. a "wing wall") on the culvert so as to prevent vehicles going off the road into the ditch.

Ackersviller v. County of Perth, 22 D.L.R. 666, 32 O.L.R. 423, 33 O.L.R. 598, 7 O.W.N. 435, 8 O.W.N. 334.

(§ III—104)—GRADE SEPARATION—PAVEMENTS AND SIDEWALKS—APPORTIONMENT OF COST.

In grade separation proceedings the cost of pavements and sidewalks on highways carried over the railway should be borne by

the municipality unless a permanent pavement already laid is destroyed by the work ordered by the Board; in that case the cost of the substituted pavement is added to the cost of such work.

Vancouver v. V.V., E.R. & N. Co., 18 Can. Ry. Cas. 296.

(§ III—104)—SEPARATION OF GRADES — AP-
PORTIONMENT OF COSTS.

A municipality making highway improvements for the convenience of the public, with the incidental grade separation, should, in addition to its own portion of the cost of the works, bear the portion of such cost from which an electric railway operating on the highway was relieved by the judgment of an appellate Court.

Vancouver v. V.V., E.R. & N. Co., 18 Can. Ry. Cas. 296.

**IV. Defects; liability for injuries to
travellers.**

A. LIABILITY OF MUNICIPALITY.

(§ IV A 1—120)—WHAT IS PUBLIC HIGHWAY—
DUTY TO KEEP IN SAFE CONDITION.

In order that a street may be considered public, so as to render a municipality liable for injuries resulting from a failure to keep it in a safe condition, it is not necessary that it should be indicated on the plan or the registry of the city; it is sufficient that it is free for public passage and that the public use it therefor.

City of Montreal v. Gamache, 25 D.L.R. 303, 24 Que. K.B. 312.

(§ IV A 1—120)—PRIVATE ROAD—DUTY AS
TO REPAIRS.

A highway laid out by private persons, which had not been assumed by the municipality, does not impose a duty on the latter to keep it in repair, as to render it liable for injuries sustained in consequence of a ditch constructed thereon by private persons.

Jones v. Town of Swift Current, 23 D.L.R. 11, 8 S.L.R. 310, 8 W.W.R. 1100, 31 W.L.R. 899.

(§ IV A 1—120)—DUTY TO REPAIR—ACCOM-
MODATION OF TRAFFIC.

The statutory duty of a municipality to keep its highways in repair may be limited by its financial ability in view of the limitation placed by statute upon its borrowing powers; the duty of the municipality is to keep the roads under its control in a reasonably sufficient state for traffic requirements.

Ackersviller v. County of Perth, 22 D.L.R. 666, 32 O.L.R. 423, 33 O.L.R. 598, 7 O.W.N. 435, 8 O.W.N. 334.

(§ IV A 1—120) — FAILURE TO REPAIR — IN-
JURIES TO TRAVELLER.

Where a statute vested in a municipality the public roads within its boundaries and empowered the municipality to repair, but did not purport to impose a duty to repair nor to create a liability on failure to repair, the municipality is not liable in damages for injuries sustained by a person driving on the

road through its lack of repair, where the non-repair was due to nonfeasance only as distinguished from misfeasance. [Macpherson v. Bathurst, 4 A.C. 257; Cowley v. Newmarket, [1892] A.C. 345; Geldert v. Pictou, [1893] A.C. 524; Sydney v. Bourke, [1895] A.C. 433, 64 L.J.P.C. 140; Vancouver v. McPhalen, 45 Can. S.C.R. 194, distinguished.]

Von Mackensen v. Dist. of Surrey, 22 D.L.R. 253, 21 B.C.R. 198, 8 W.W.R. 541.

(§ IV A 1—120)—WANT OF REPAIRS—INJURY
TO TRAVELLER.

Sec. 532 of the Halifax City Charter does not impose an absolute liability upon the city to keep the streets in good order and repair as under sec. 522, the committee on works is to exercise a discretion as to the expenditure of the money at its disposal for the purpose of street repairs; and mere non-repair, as distinguished from an act of misfeasance, does not give rise to an action on the part of the person injured in consequence thereof. [Vancouver v. McPhalen, 45 Can. S.C.R. 194, distinguished.]

Coleman v. City of Halifax, 22 D.L.R. 781, 48 N.S.R. 442.

(§ IV A 1—120) — BRIDGE — REPAIRS —
STATUTORY LIABILITY OF RAILWAY AND
MUNICIPALITY.

Notwithstanding the statutory liability of a railway to maintain a bridge and its approaches built under the authority of the Irrigation Act, R.S.C. 1906, ch. 61, sec. 25, a municipality within the confines of which the approaches to such bridge form part of a public highway which it is bound to repair will also be liable for damages on failure to supply a proper railing on either side of the approach so as to render it safe for vehicle traffic where injury resulted from such neglect.

Lusk v. City of Calgary, Wheatley v. City of Calgary, 22 D.L.R. 50.

(§ IV A 1—120)—NONREPAIR — INJURY TO
TRAVELLER—NOTICE TO CITY CORPORATION
—CONTRIBUTORY NEGLIGENCE—FINDINGS
OF FACT OF TRIAL JUDGE—EVIDENCE—
CONFLICT BETWEEN WITNESSES—WEIGHT
OF NEGATIVE STATEMENTS—DAMAGES.

Bradish v. City of London, 9 O.W.N. 296.

(§ IV A 1—122)—NONREPAIR OF BRIDGE
FORMING PART OF HIGHWAY — COLLAPSE
UNDER WEIGHT OF TRACTION ENGINE.

The defendants, a township corporation, were held liable, under sec. 460 (1) of the Municipal Act of 1913, 3 & 4 Geo. V. ch. 43, for the death of a person on the 1st August, 1913, which was found to have occurred in consequence of the disrepair of a bridge forming part of a highway in the township. The bridge gave way under the weight of a traction engine upon which the deceased was seated, engaged as a volunteer in steering it, while the owner stood beside him on the engine regulating the speed of the engine, which was being propelled slowly along the highway and upon the bridge. A

statutory obligation having been imposed on the defendants, together with a liability for all damages sustained by any person by reason of default, the question of notice to or knowledge of the defects by the corporation was, in the circumstances of the case, immaterial; but, if notice was necessary, the defendants had, as early as 1911, adequate notice of the disrepair into which the bridge had fallen. Upon the evidence, it could not be found that, if planks had been laid down by the deceased or the owner of the engine, before propelling it upon the bridge, in compliance with the Traction Engine Act, 2 Geo. V. ch. 53, sec. 5, sub-sec. 4, the bridge would not have fallen; and to make the failure to comply with the requirements of the statute a defence, it must be shewn that there was a direct causal relation between such failure and the accident which followed. The effect of the statutory requirement that there be laid down "planks of sufficient width and thickness to fully protect the flooring or surface of such bridge or culvert from the contact of the wheels of such engine." 2 Geo. V. ch. 53, sec. 5, sub-sec. 4, considered; and *Goodison Thresher Co. v. Tp. of McNab*, 19 O.L.R. 188, 44 Can. S.C.R. 187, distinguished.]

Linstead v. Tp. of Whitchurch, 35 O.L.R. 1, 9 O.W.N. 220.

(§ IV A 5—151)—LACK OF GUARD RAILS—INJURIES TO TRAVELLERS — CONTRIBUTORY NEGLIGENCE.

Contributory negligence of the driver of a democrat wagon in which the plaintiff's goods, consisting of commercial traveller's samples, were being conveyed for hire along with the commercial traveller as a passenger, is not attributable to the plaintiffs in answer to their claim against the municipality for damages to the goods on the wagon being upset and the trunks broken due to the neglect of the municipality to protect a narrow part of the roadway by a guard rail, if the plaintiffs' traveller in no way participated in or was responsible for the driver's alleged acts of negligence. [*Mills v. Armstrong*, "The Bernina," 13 A.C. 1; *Bloch v. Moyer*, 7 O.W.N. 830, referred to.]

Robinson Little & Co. v. Tp. of Dereham, 23 D.L.R. 321, 8 O.W.N. 173.

(§ IV A 5—154a)—LACK OF REPAIR—FILLING UP HOLE WITH MANURE—NOTICE.

Filling up a hole in a highway with manure in an attempt by a municipality to remedy its dangerous condition, is actionable negligence which will render the municipality liable for injuries to a traveller resulting therefrom, unless by a failure to comply with the notice requirements under sec. 21 of the Rural Municipalities Act, ch. 87, R.S.S. 1909, the right to such recovery is defeated. *Carleton v. Rur. Mun. of Sherwood*, 25 D.L.R. 66, 8 S.L.R. 431, 9 W.W.R. 611, 32 W.L.R. 936, reversing 32 W.L.R. 177, 8 W.W.R. 562.

(§ IV A 6—155)—ICY SIDEWALK—INJURIES TO PEDESTRIAN.

The gross negligence required by sec. 450, sub-sec. 3, of the Municipal Act, R.S.O. 1914, ch. 192, is established in an action for injury to a pedestrian by falling on an icy sidewalk in a town where the ice on a sidewalk in front of a store on a busy street was lumpy and formed a slope and it was shewn that within a period of five days three other persons fell at the same place, notwithstanding which the town corporation did nothing to remedy the dangerous condition of same.

Edwards v. Town of North Bay, 22 D.L.R. 744, 8 O.W.N. 119.

(§ IV A 6—155)—EXCAVATION IN SIDEWALK—INJURY TO PEDESTRIAN.

A municipality is answerable for the death of a pedestrian resulting from his falling into an excavation on the sidewalk, around which there was no enclosure or safeguard to warn against the danger, although the street itself was partly closed by a barrier indicating dangerous operations thereon.

City of Montreal v. Gamache, 25 D.L.R. 303, 24 Que. K.B. 312.

(§ IV A 6—155)—INJURY CAUSED BY FALL OF TREE AT SIDEWALK.

A tree which is situated on a slope upon the edge of a public sidewalk and the branches of which are trimmed by the municipal corporation is under the control of the latter, which is liable for the damages caused by a fall of an unsound branch.

Town of Coaticook v. Laroche, 24 Que. K.B. 339.

(§ IV A 6—155) — NONREPAIR — INJURY TO PEDESTRIAN BY FALL ON DEFECTIVE SIDEWALK — NEGLIGENCE—LACK OF SYSTEM — FAILURE TO GIVE NOTICE TO MUNICIPALITY IN DUE TIME—MUNICIPAL ACT, R.S.O. 1914, CH. 192, SEC. 460 (4), (5)—REASONABLE EXCUSE—ABSENCE OF PREJUDICE.

Wallace v. City of Windsor, 9 O.W.N. 100.

(§ IV A 6—155)—NONREPAIR—SNOW AND ICE ON SIDEWALK OPPOSITE CHURCH PROPERTY USED AS RINK—INJURY TO PEDESTRIAN—CLAIM AGAINST CITY CORPORATION—FAILURE TO GIVE NOTICE REQUIRED BY MUNICIPAL ACT—CLAIM AGAINST TRUSTEES OF CHURCH PROPERTY OCCUPIED BY SEPARATE ORGANISED BUT UNINCORPORATED BODY—OWNER AND OCCUPIER—LIABILITY—NUISANCE CREATED BY SERVANTS OF CITY CORPORATION.

Grills v. City of Ottawa, 8 O.W.N. 313.

(§ IV A 6—156) — DEFECTIVE SIDEWALK — CORRUGATED SURFACE—LACK OF REPAIR — LIABILITY OF MUNICIPALITY FOR INJURIES.

Huth v. City of Windsor, 24 D.L.R. 875, 34 O.L.R. 245, 8 O.W.N. 574; 9 O.W.N. 114.

B. LIABILITY OF OTHERS.

(§ IV B 1—160) — EXCAVATION—INJURY TO PASSER-BY—NEGLIGENCE OF GAS COMPANY — FINDING OF JURY—POSSIBLE REMEDY AGAINST MUNICIPAL CORPORATION LOST BY FAILURE TO GIVE NOTICE UNDER MUNICIPAL ACT—JOINT TORT-FEASORS—EFFECT OF RELEASE OF ONE—RIGHT OF CONTRIBUTION—MISFEASANCE—NONFEASANCE.

King v. Consumers Gas Co., 8 O.W.N. 494.

(§ IV B 1—161)—OBSTRUCTING ACCESS AND EGRESS TO PUBLIC ROADS — LIABILITY OF MUNICIPAL CONTRACTORS.

When a municipality causes public works to be done on its streets and agrees with the contractors, among other things, that the latter will not close the streets nor obstruct them further than necessary and will make sure and sufficient passages through the lanes, roads, houses and properties bordering on the works, a ratepayer who has a place of business upon one of such streets and who has suffered damages by the fact that the contractors have completely closed all access to his business, when they could at some expense obtain for the plaintiff a passage over the neighbouring properties, has a recourse for damages against the contractors.

Brunet v. Beauchamp, 47 Que. S.C. 409.

(§ IV B 1—161)—SAND HEAP LEFT IN FRONT OF HOUSE IN COURSE OF ERECTION—INJURY TO VEHICLE RUNNING INTO IT — OBSTRUCTION — NUISANCE — LIABILITY OF SUB-CONTRACTORS FOR BUILDING — CONTRIBUTORY NEGLIGENCE — EVIDENCE — ONUS—FINDING OF TRIAL JUDGE — APPEAL—Costs.

Robinson v. Campbell, 8 O.W.N. 537, 9 O.W.N. 184.

C. CONTRIBUTORY NEGLIGENCE.

(§ IV C—210)—DRIVING UNBROKEN HORSES — VIOLATION OF BY-LAW.

The driving of an unbroken team of horses, in contravention of a by-law prohibiting the act, precludes recovery for injuries sustained by reason of a defect in the highway.

Jones v. Town of Swift Current, 23 D.L.R. 11, 8 S.L.R. 310, 8 W.W.R. 1100, 31 W.L.R. 899.

(§ IV C—218)—DITCH ON HIGHWAY—DRIVING UNBROKEN HORSES.

One driving a team of unbroken horses whose speed he could not control is not entitled to recover against a municipality for injuries he sustained by being caused to jump off the vehicle to avoid falling into a ditch on the highway.

Jones v. Town of Swift Current, 23 D.L.R. 11, 8 W.W.R. 1100, 8 S.L.R. 310, 31 W.L.R. 899.

V. Discontinuance; alteration; abandonment.

A. DISCONTINUANCE.

(§ V A 1—245)—CLOSING—NOTICE.

The notice which must be published by a

municipality of its proposed by-law to close part of a public street under the Municipal Act, R.S.O., 1914, ch. 192, sec. 475, must state a time when the by-law will be considered so that those interested may then attend and be heard. [Re Birdsall and Asphodel, 45 U.C.R. 149, followed.]

Re Rogers, 22 D.L.R. 590, 7 O.W.N. 717.

(§ V A 1—245) — DEDICATION BY PLAN — CLOSING.

A street as it appears on a plan registered by the owner of a tract of land, but which was fenced in with the remaining land and never used as a street, is nevertheless a public highway within the meaning of sec. 44 of the Survey Act, R.S.O. 1914, ch. 166, and by virtue of secs. 601 and 673 (1) of the Consolidated Municipal Act, 1903, the municipal council has power to pass a by-law closing it up.

Jones v. Tp. of Tuckersmith, Re Jones and Tp. of Tuckersmith, 23 D.L.R. 569, 33 O.L.R. 634, 8 O.W.N. 344.

(§ V A 1—245)—REVERSION OF LAND UPON ABOLITION OF ROAD.

According to the principles of our municipal law, the land of an abolished road returns to the lot from which it has been detached, and if the land of such road has not been taken from the adjoining lot, it belongs to the lots between which it is situate—half of it to each lot.

Cormier v. Vaillant, 24 Que. K.B. 161.

(§ V A 1—249)—CLOSING — OPPORTUNITY OF HEARING.

Objections to the passage of a by-law once heard by the municipal council at a meeting when the by-law was first considered does not entitle the opponents thereto to an opportunity again to be heard in another session for the final passage of the by-law.

Jones v. Tp. of Tuckersmith; Re Jones and Tp. of Tuckersmith, 23 D.L.R. 569, 33 O.L.R. 634, 8 O.W.N. 344.

(§ V A 2—250)—SALE OF CLOSED HIGHWAY—RIGHTS OF ABUTTING OWNERS.

The effect of sub-sec. 11 of sec. 640 of the Consolidated Municipal Act, 1903, is that the municipal council has no authority to sell the situs of a closed highway without first offering it to the abutting owners, and it is only in the event of their refusal that authority is given to sell to any one else; and a by-law passed or conveyance made in contravention of that authority will be set aside.

Jones v. Tp. of Tuckersmith; Re Jones and Tp. of Tuckersmith, 23 D.L.R. 569, 33 O.L.R. 634, 8 O.W.N. 344.

(§ V A 2—251)—CLOSING—RIGHTS OF ABUTTING OWNERS—MEANS OF ACCESS.

Sub-sec. 1 of sec. 629 of the Consolidated Municipal Act, 1903, prohibiting the closing of any highway whereby abutting owners are deprived of access to their lands applies only to cases when the only convenient means of access is over the land closed up, and not where there is already another

means of access though less convenient; nor does it apply in favour of purchaser of a lot on the closed portion of the highway after the passage of the by-law or who had knowledge that it was about to be passed at the time of the purchase.

Jones v. Tp. of Tuckersmith; Re Jones and Tp. of Tuckersmith, 23 D.L.R. 569, 33 O.L.R. 634, 8 O.W.N. 344.

B. ALTERATION.

(§ V B—255)—ALTERATION BY MUNICIPAL CORPORATION—EXCHANGE OF LOTS—VALIDITY OF BY-LAW—ARTS. 16, 527, 794, 799, M.C.—ART. 1081, C.C.

Daoust v. Parish of Chantal, 25 D.L.R. 852, 47 Que. S.C. 236.

VI. Highway officers.

(See previous Annual Digests.)

HOLIDAYS.

See Sunday.

HOMESTEAD.

I. THE EXEMPTION GENERALLY.

- A. In general; who may claim.
- B. In what property.
- C. Establishment by occupancy.

II. CREDITORS' RIGHTS.

III. LOSS; ABANDONMENT.

IV. ALIENATION; ENCUMBRANCE AND TRANSMISSION OF EXEMPT PROPERTY.

- A. Sale, lease or mortgage.
- B. Transmission in case of death.

V. ALLOTMENT AND SETTING APART.

As to exemptions generally, see Exemptions.

I. The exemption generally.

B. IN WHAT PROPERTY.

(§ I B—5)—PROCEEDS OF FORCED SALE—VOLUNTARY TRANSFER.

The surplus proceeds after the involuntary or forced sale of a homestead under process of law still retain their exempt character. The 1913 Amendment to sec. 118(2) of the Land Titles Act does not affect a voluntary transfer, if made by the debtor to a member of his family. [*Meunier v. Doray*, 2 W.L.R. 231, referred to.]

National Trust Co. v. Stancul, 7 W.W.R. 1389.

II. Creditors' rights.

III. Loss; abandonment.

(See previous Annual Digests.)

IV. Alienation; encumbrance and transmission of exempt property.

B. TRANSMISSION IN CASE OF DEATH.

(§ IV B—35)—ORDER AUTHORIZING SALE BY ADMINISTRATOR—NULLITY.

The holder of a homestead entry in the railway belt died without obtaining a Crown grant or recommendation for patent. The

official administrator obtained an order for the administration of the estate and a further order, under the Intestate Estates Act, R.S.B.C. 1897, ch. 106, authorizing him to sell deceased's real estate. He then executed an agreement for sale of the homestead to the plaintiff. In an action for specific performance of the agreement, held, that the agreement for sale was null and void under the provisions of sec. 28 of the regulations affecting Dominion Lands in Railway Belt in British Columbia. [*American Abell Engine and Thresher Co. v. McMillan*, 42 Can. S.C.R. 377, followed.]
Johnson v. Anderson, 20 B.C.R. 471.

V. Allotment and setting apart.

(See previous Annual Digests.)

HOMICIDE.

I. IN GENERAL.

II. WHAT REDUCES CRIME TO MANSLAUGHTER.

III. EXCUSABLE OR JUSTIFIABLE HOMICIDE.

- A. In general.
- B. Self-defence.

Accused as a witness; cross-examination, see Criminal Law, II.; Witnesses.

Review of charge of manslaughter in procuring abortion, see Appeal, VII. M.

Prejudicial error in conduct of trial, see Appeal; New Trial.

Liability of insane person committing, see Criminal Law.

Attempt to commit, see Criminal Law.

Stay of execution of death sentence, see Criminal Law.

Evidence of confessions on trial for, see Evidence, VIII.

Admissibility of dying declarations, see Evidence, X.

Sufficiency of indictment for, see Indictment.

Instructions on trial for, see Trial.

Change of venue in prosecution for, see Venue.

I. In general.

(§ I—2a)—NEGLECT TO PROVIDE FOR PARENT —“NECESSARIES”—MANSLAUGHTER.

Where a son has undertaken the care of his father, he is bound to execute his charge without wicked negligence, and if he does not do so sec. 241 of the Cr. Code applies, and he can, as a matter of law, be convicted of manslaughter, when the death of his father is due to such negligence. “Necessaries” include care and attention, as well as food and nourishment.

Rex v. Dalke, 33 W.L.R. 113, 25 Can. Cr. Cas.

II. What reduces crime to manslaughter.

(§ II—15)—MURDER—EVIDENCE POINTING TO MANSLAUGHTER—COURT'S DUTY TO INSTRUCT.

On the trial of an accused on a charge of murder, when the evidence shews that the jury may reasonably infer a case of manslaughter, there must be a direction on that

point. *Semble* (per *Irving, J.A.*), a Judge ought to be slow to arrive at the conclusion that there are no circumstances that would justify a verdict of manslaughter.

Rex v. Jagat Singh, 9 W.W.R. 514, 32 W.L.R. 637, 25 Can. Cr. Cas.

(§ II—18)—DRUNKENNESS.

Homicide is reduced from murder to manslaughter where the accused, at the time he committed the act, was so under the influence of liquor that his reason was destroyed and he did not know what he was doing or know that he was liable to cause grievous bodily harm. [Compare *R. v. Jessamine*, 19 Can. Cr. Cas. 214, 1 D.L.R. 285, 3 O.W.N. 753, and *R. v. Wilson*, 21 Can. Cr. Cas. 448, 46 N.S.R. 59.]

Rex v. Studdard, 25 Can. Cr. Cas. 81.

III. Excusable or justifiable homicide.

(See previous Annual Digests.)

HORSES.

Generally, see *Animals*.

Injury to while in hands of bailee, see *Bailment*.

Negligence in fast driving, see *Highways*; *Negligence*.

Injury to, by railroad train, see *Railways*, II; *Carriers*; *Street Railways*.

Breach of warranty on sale of, see *Sale*.

HOSPITALS.

See also *Health*; *Physicians and Surgeons*; *Charities*.

(§ I—4) — LIABILITY FOR NEGLIGENCE — INJURY TO PATIENT—CARE IN SELECTION OF ATTENDANTS.

Lavere v. Smith's Falls Public Hospital, 24 D.L.R. 866, 34 O.L.R. 216, 8 O.W.N. 548.

HOTELS.

Liability of innkeepers, see *Innkeepers*.

License to sell intoxicating liquors in, see *Intoxicating Liquors*.

HOUSE OF ILL-FAME.

See *Disorderly Houses*.

HUSBAND AND WIFE.

I. RIGHTS, LIABILITIES AND DISABILITIES GENERALLY.

A. Of husband.

B. Of wife.

C. Joint liabilities.

II. PROPERTY RIGHTS; TRANSACTIONS BETWEEN.

A. In general.

B. Estate by entireties.

C. Community property.

D. Wife's separate estate or business.

E. Contracts with or conveyances to each other.

F. Conveyances or mortgages to third persons.

G. Trusts.

H. Partnership.

I. Antenuptial contract.

J. Fraud on marital rights.

K. Rights of husband's creditors.

III. ACTIONS.

A. By husband.

B. By wife.

C. By both husband and wife.

D. Between husband and wife.

IV. ABANDONMENT OF WIFE.

V. WIFE'S AUTHORITY TO SUE OR DEFEND.

As to breach of promise, see *Breach of Promise*.

Estates by marriage, see *Curtsey*; *Dower*; *Descent and Distribution*.

Divorce and separation, see *Divorce and Separation*.

As to validity of marriage, see *Marriage*.

Competency of as witnesses, privileges, see *Witnesses*; *Evidence*.

Custody of children, see *Divorce and Separation*; *Infants*.

As to domicile, see *Domicile*; *Conflict of Laws*.

Transactions between, see *Fraudulent Conveyances*.

Annotations.

Wife's competency as witness against husband; Criminal non-support: 17 D.L.R. 721.

Married women; separate estate; property rights as to wife's money in her husband's control: 13 D.L.R. 824.

Enemy alienage as affecting status of married women: 23 D.L.R. 375, 380.

I. Rights, liabilities and disabilities generally.

A. OF HUSBAND.

(§ I A 2—16) — LIABILITY FOR NECESSARIES — CREDIT.

The liability for necessities furnished is determined by the question whether credit was given to the husband or the wife and when credit is extended to one of them, it cannot later be altered by varying the heading of the account.

Boland v. Skead, 24 D.L.R. 543, 48 Que. S.C. 244.

(§ I A 2—16)—LIABILITY FOR GOODS SUPPLIED TO WIFE.

The defendant's wife purchased goods from plaintiffs from time to time during three years to an amount of more than \$1,000. The price of the goods was charged to the wife, who occasionally made payments on account. Finally this action was brought against the husband to recover a balance of account amounting to \$346.75. The plaintiffs had no dealings with defendant until he issued a notice that he would not be responsible for his wife's debts, when they sought to fix the debt upon him. It was proven at the trial that defendant had always furnished his wife with sufficient money to clothe and feed herself and her

children, and that he knew nothing about the goods having been obtained from plain-tiffs, and had expressly forbidden his wife to pledge his credit. Held, that the husband has rebutted the presumption placed upon him by law that he authorized his wife to purchase the goods.

Finch v. Minnie, 20 B.C.R. 331.

(§ I A 2—16)—NECESSARIES CONTRARY TO HUSBAND'S CHOICE.

The husband is not liable for the price of goods ordered or accepted by his wife contrary to the choice that he himself made, though they were movables necessary for the household.

Casavant v. Ciccini, 47 Que. S.C. 412.

(§ I A 2—16)—HUSBAND'S FAILURE TO PROVIDE MAINTENANCE—DUTY OF FATHER-IN-LAW.

A wife, whose husband does not furnish herself nor her children the necessaries of life, has a right to demand maintenance from her father-in-law if she is incapable of working. It is no defence of the latter that the husband is able to maintain his wife and children, and that, if he does not do so, it is owing to the fault of the latter.

Laporte v. Brunet, 48 Que. S.C. 74.

(§ I A 2—16)—SEPARATION DE CORPS—MAINTENANCE.

A voluntary separation de corps between consorts does not cause the wife to lose her right to maintenance and to care necessary for her life for which her husband is under an obligation towards her as well by virtue of law as under the marriage contract. Whatever may have been the misconduct of a wife so voluntarily separated, she does not lose her recourse against the husband for assistance and support so long as the marriage ties exist or so long as it has not been declared dissolved on special grounds by a competent authority.

Blodeau v. Chartrand, 47 Que. S.C. 249.

(§ I A 2—16)—LIABILITY FOR MAINTENANCE AS AFFECTED BY SECOND MARRIAGE.

A second marriage does not deprive a mother of the right to a claim for the maintenance of her children. The community as to property between consorts is obliged to furnish maintenance to one of them even married a second time. The husband, as the head of the family, can be sued for a debt of the community without his wife being made a party.

Dorion v. Robert, 47 Que. S.C. 207.

(§ I A 2—18)—LIABILITY FOR WIFE'S NOTE NOT "REGISTERED"—AGENCY.

A husband carrying on business for his wife as her attorney and who, by error, for her benefit, signs notes in her name without adding the word "registered," is not liable to the holder of the notes if the latter was aware that they were given on account of the wife.

Finlay v. Boileau, 48 Que. S.C. 444.

B. OF WIFE.

(§ I B 2—31)—POWER TO EMPLOY AGENT TO SELL LAND—CONSENT OF HUSBAND.

A wife separated as to property cannot authorize a real estate agent to sell her property and undertake to pay him a commission if he sells it, without special authority in writing from her husband.

Jacques v. Léonard, 47 Que. S.C. 344.

(§ I B 2—36)—PROMISSORY NOTES MADE BY WIFE AS SECURITY FOR LOAN TO HUSBAND—KNOWLEDGE OF WIFE OF NATURE OF TRANSACTION—ABSENCE OF UNDUE INFLUENCE—WANT OF INDEPENDENT ADVICE.

Shilton, Wallbridge & Co. v. Michie, 8 O.W.N. 571.

(§ I B 2—40)—POWER OF ATTORNEY TO HUSBAND TO EXECUTE NOTE—SCOPE.

A husband signed a note to a bank to secure an advance to himself in his wife's name under a power of attorney containing a clause permitting him to sign notes "in which I shall be interested or concerned which shall be requisite." The power of attorney was not produced to the bank at the time the note was given and the advance made. Held, that the signing of the note by the attorney put the bank on enquiry, and, there being no evidence that the wife was interested or concerned in the note, she was not liable on the note.

Bank of Nova Scotia v. Hawkins, 31 W.L.R. 505.

(§ I B 2—40)—WIFE'S LIABILITY FOR HUSBAND'S SERVICES—POWER OF ATTORNEY.

Art. 685, C.P.Q., which declares that if the debtor is in the employ of a tiers-saisi or works for him, but without receiving any salary or remuneration, the Judge can order proof to be made of the value of the services or his work, does not apply to the case of a husband who, though holder of general power of attorney from his wife, only engages in her business occasionally, as he feels inclined, for receipt of her revenues, the wife being an owner of immovables and carrying on no business or industry.

Latour v. Lefebvre, 48 Que. S.C. 447.

C. JOINT LIABILITIES.

(§ I C—45)—BREACH OF TRUST BY HUSBAND—KNOWLEDGE AND BENEFIT OF WIFE—LIABILITY.

Harrison v. Mathieson, 9 O.W.N. 170.

(§ I C—45)—LIABILITY FOR HOSPITAL EXPENSES—CHARGE ON ESTATE.

Homewood Sanitarium v. Parker, 8 O.W.N. 402.

II. Property rights; transactions between.

A. IN GENERAL.

(§ II A—50)—HOUSE AND LAND PURCHASED BY HUSBAND—ACTION BY WIFE TO ESTABLISH CO-OWNERSHIP—EVIDENCE—CONTRIBUTIONS TO PURCHASE-PRICE—SEPA-

RATE EARNINGS — GIFT — PAYMENT OF TAXES—POSSESSION.
Kaakee v. Kaakee, 7 O.W.N. 648.

C. COMMUNITY PROPERTY.

(§ II C—65) — DEATH OF WIFE—COMMUNITY PROPERTY—DIVISION OF—WANT OF INVENTORY—CONTINUATION OF COMMUNITY.
Laroche v. Laroche, 24 D.L.R. 909, 24 Que. K.B. 138.

(§ II C—65) — SEPARATION FROM BED AND BOARD—COMMUNITY PROPERTY — MORTGAGE OF—FRAUD—CONTESTATION.
Lafontaine v. Guindon, 25 D.L.R. 858, 48 Que. S.C. 332.

(§ II C—68) — INTERDICTED HUSBAND—CONVEYANCE BY WIFE—AUTHORISATION.

A notarial deed by which a wife transfers to one of her children all the rights in the community as to property existing between her and her interdicted husband of whom she is the curatrix, as well as her future and eventual rights in an immovable belonging to her husband in case of his death, is void, and the wife, either personally or as curatrix of her husband, can demand that it be annulled. This nullity proceeds from three causes: (a) The deed is prohibited by the statute which forbids alienation of eventual rights in the succession of a living man unless provided by marriage contract; (b) as curatrix of her husband, or personally, the wife, being subject to her husband's control, cannot execute a deed of alienation without the authority of her husband, or, failing that, the authority of a judge.

Dunn v. Wheatley, 48 Que. S.C. 245.

(§ II C—68) — SEIZURE BY CREDITORS—OPPOSITION *AFIN DE DISTRAIRE*.

When lots of land belonging to community property between consorts are seized by a creditor, and an opposition is made by one of the heirs of the deceased wife, setting up his undivided rights and "that he intends to take proceedings in partition and licitation," this opposant has a right to demand a suspension of the seizure until after the partition and licitation of the said immovables. It is immaterial that the opposant has only a bare title in the lots seized.

Martel v. Vigneault, 47 Que. S.C. 53.

D. WIFE'S SEPARATE ESTATE OR BUSINESS.

(§ II D—74) — SEIZURE OF WIFE'S PROPERTY FOR HUSBAND'S DEBTS—FURNITURE.

Furniture purchased by a wife separated as to property with a sum of money which had been given to her by her father-in-law as a wedding gift, like those bought by her with her savings as mistress of the house from a moderate sum that her husband gave her each week for the maintenance of the household and payment of the rent, belongs to the wife and cannot be seized by the creditors of the husband. The payment of this sum each week by the husband to his wife for the necessary household expenses

cannot be regarded as one of the advantages forbidden between consorts.

Goulet v. Gratton, 47 Que. S.C. 465.

E. CONTRACTS WITH OR CONVEYANCES TO EACH OTHER.

(§ II E—83) — CONVEYANCE OF HUSBAND TO WIFE—SALE BY WIFE TO THIRD PARTY.

Where the purchaser of lands, on completing the contract, had them conveyed to his wife instead of to himself, with the intention thereby to prevent an execution creditor from realizing therefrom, and to hold upon a secret trust for the husband, but the property was exempt to its full value at that time under a homestead exemption law, the intent to defeat creditors not having been accompanied by any illegal act, is not a bar to the husband bringing an action against his wife for the return of the property to him in pursuance of the trust or to declare him entitled to the benefit of the contract of sale made by her to a third person. (Per *Stuart and Beck, JJ.*, in a divided Court, affirming *Scott, J.*, at the trial.) [*Meunier v. Doray*, 6 Terr. L.R. 194, and *Day v. Day*, 17 A.R. (Ont.) 157, applied; and see *Scheuerman v. Scheuerman*, 17 D.L.R. 638.

Scheuerman v. Scheuerman, 21 D.L.R. 593, 8 A.L.R. 417, 7 W.W.R. 1308, 30 W.L.R. 557.

F. CONVEYANCES OR MORTGAGES TO THIRD PERSONS.

(§ II F 2—99) — MORTGAGE BY WIFE TO SECURE LOAN TO HUSBAND—LACK OF INDEPENDENT ADVICE—UNDUE INFLUENCE — APPLICATION OF PAYMENTS IN DISCHARGE OF MORTGAGES.

Royal Trust Co. v. Lloyd, 25 D.L.R. 802, 9 W.W.R. 122, 32 W.L.R. 354.

I. ANTENUPTIAL CONTRACT.

(§ II I—110) — MARRIAGE SETTLEMENT — CONSTRUCTION — POWER OF APPOINTMENT—EXERCISE OF—DEATH OF APPOINTEE — LIFE ESTATE — VESTED REMAINDER—RIGHTS OF REPRESENTATIVE OF DECEASED.

Re Plumb, 8 O.W.N. 284.

K. RIGHTS OF HUSBAND'S CREDITORS.

(§ II K—132) — SEIZURE OF AUTOMOBILE GIVEN TO WIFE—LICENSE IN NAME OF HUSBAND.

An automobile given by a husband to a wife, which remains in the disposition and the license for which is in the name of the husband, can be seized under execution against the husband.

Standard Trusts Co. v. Little, 7 W.W.R. 1285.

III. Actions.

A. BY HUSBAND.

(§ III A—143) — ALIENATION OF AFFECTIONS — CONDONATION OF OFFENCE.

A husband, having complained of the bad

conduct of his wife, who continues to live with her, cannot maintain an action for damages against one whom he accuses of having alienated his wife's affections any more than he could have taken proceedings against her, since he is presumed to have condoned her offence.

Roberge v. Sylvestre, 47 Que. S.C. 118.

B. BY WIFE.

(§ III B—145)—CRIMINAL PROSECUTION FOR NEGLIGENCE TO PROVIDE.

The wife, separated as to bed and board by a judgment of the Court, is not obliged to renounce such a judgment and to go back and live with her husband before bringing a criminal prosecution against him for his neglect to provide her with necessaries.

Buteau v. Hamel, 24 Can. Cr. Cas. 53.

IV. Abandonment of wife.

(See previous Annual Digests.)

HYPOTHEC (Que.).

I. IN GENERAL.

II. RIGHTS AND LIABILITIES.

III. CLASS OF PROPERTY.

IV. DISCHARGE.

V. HYPOTHECARY ACTION.

I. In general.

(See previous Annual Digests.)

II. Rights and liabilities.

(§ II—20)—DONATION INTER VIVOS — VENDOR'S HYPOTHEC.

A donation inter vivos constitutes a vendor's hypothec in favour of all the obligations imposed on the donee either in favour of the donor or of third parties without the necessity of an agreement providing for that purpose. The provision of art. 2044, C.C., which declares that the conventional hypothec is only valid in so far as the sum agreed upon in it is certain and fixed by the deed does not extend to the payment of a sum of money imposed as a charge in a donation inter vivos.

Drouin v. Gaudet, 48 Que. S.C. 137.

(§ II—20)—PAYMENT BY PURCHASER — EXTENSION OF TIME.

When a purchaser, who is obliged to pay a debt guaranteed by a hypothec upon the property sold and another immovable belonging to the vendor, at the maturity of the debt obtains from the hypothecary creditor an extension of time without the vendor's consent, the latter is entitled to judgment against him for the amount of the debt.

Bédard v. Hurtubise, 48 Que. S.C. 285.

(§ II—20)—DEMOLITION OF IMPROVEMENTS—RIGHTS OF THIRD PARTY.

The holder of a hypothecated immovable has no right to demolish constructions on it even to replace them by others of greater value. Such demolitions, by diminishing

the security of the hypothecary creditor, subject the third party holder to the application of art. 1092, C.C., which causes him to lose the benefit of the term. (Inscribed in review.)

Demers v. Strachan, 48 Que. S.C. 71.

ICE.

Contract for supply of ice, see Contracts.

As element of compensation in expropriation, see Eminent Domain; Damages, III L.

Liability for icy condition of streets or sidewalks, see Highways; Municipal Corporations.

IDENTITY.

Parol evidence of, see Evidence, VI.

ILLEGAL CONTRACTS.

See Contracts, III.

ILLEGAL FEES.

See Secret Commissions.

IMITATION.

Injunction against, see Injunction I.

Infringement of trade-mark, see Trade-marks; Trade-name.

IMPEACHMENT.

Of award in expropriation, see Damages; Arbitration.

Of witnesses, see Witnesses.

Of officer, see Officers.

Of defective instruments, see Bills of Sale; Chattel Mortgage; Fraudulent Conveyances; Wills; Deeds; Contracts.

IMPLIED AGREEMENT.

See Contracts.

IMPLIED COVENANT.

In lease, see Landlord and Tenant, II.

IMPLIED POWERS.

See Powers.

Of corporation, see Corporations and Companies.

IMPLIED WARRANTY.

On sale of goods, see Sale.

IMPRISONMENT.

For crime generally, see Criminal Law; Arrest.

Liability for false imprisonment, see False Imprisonment; Malicious Prosecution.

IMPROVEMENTS.

Recovery for, in eminent domain proceedings, see Damages; Eminent Domain.

Lien for, see Mechanics' Liens.

Public improvements, see Drains and Sewers; Highways, III; Public Improvements.

On land under mistake of title, see Vendor and Purchaser.

INCOMPETENT PERSONS.

- I. WHO ARE; INQUISITION; ADJUDICATION.
- II. CONTRACTS; DEEDS.
- III. TORTS.
- IV. CONFINEMENT; SUPPORT IN ASYLUM.
- V. SUITS BY OR AGAINST.
- VI. POWERS OF COMMITTEE AND ADMINISTRATION OF ESTATE.

Competency to commit crime, see Criminal Law, I.

As to married woman, see Husband and Wife.

As to Indians, see Indians.

As to infants, see Infants.

Testamentary capacity, see Wills, I.

Incompetency of witnesses, see Witnesses.

I. Who are; inquisition; adjudication.

(§ I-3) — LUNATIC — APPLICATION FOR APPOINTMENT OF COMMITTEE—REFUSAL AS UNNECESSARY.

Re Taylor, 9 O.W.N. 110.

(§ I-6) — LUNATICS—RESTORATION TO CAPACITY—EFFECT OF DEATH.

Where a person was by an order of Court adjudged a lunatic and his affairs and estate placed in charge of a committee, the Court has no jurisdiction, after the death of the lunatic, to enter by virtue of sec. 10 of the Lunacy Act, R.S.O. 1914, ch. 68, upon an inquiry with a view of ascertaining whether the lunatic had in fact, some years before his death, become of sound mind and capable of managing his own affairs, and that certain payments, in the nature of gifts, made by the committee out of the lunatic's property, with his knowledge and approval, might be validated.

Re Rourke, 22 D.L.R. 830, 33 O.L.R. 519, 8 O.W.N. 282.

II. Contracts; deeds.

III. Torts.

(See previous Annual Digests.)

IV. Confinement; support in asylum.

(§ IV-20) — LUNATIC—CONFINEMENT IN ASYLUM OF PERSON OF WEAK MIND—HABEAS CORPUS — RETURN — FINDING OF FACT—DISCHARGE—ONTARIO HABEAS CORPUS ACT, R.S.O. 1914, CH. 84, SEC. 7.

Re Davidson, 8 O.W.N. 481.

(§ IV-25) — RECOURSE OF MUNICIPALITY AGAINST ALIMENTARY DEBTOR.

Alimentary payments for which the debtor is only bound at his domicile are convertible into a pecuniary pension when for an overpowering cause the life in common has become impossible between the alimentary creditor and debtor. A municipal corporation which has paid the pension of a lunatic confined in an asylum, can in default

of payment by the lunatic bring a direct action for the purposes indicated in the preceding paragraph against the person who is obliged to make these alimentary payments to the lunatic.

Village of Montmorency v. Guimont, 48 Que. S.C. 378.

V. Suits by or against.

(See previous Annual Digests.)

VI. Powers of committee and administration of estate.

(§ VI-30) — LUNATIC'S ESTATE — INVESTMENTS.

The property of persons not sui juris should not be left for private investment, but should be paid into or lodged in Court and become subject to the general system of administration, by which the interest is punctually paid and the corpus is always forthcoming when needed.

Re Rourke, 22 D.L.R. 830, 33 O.L.R. 519, 8 O.W.N. 282.

(§ VI-30) — LUNATIC'S ESTATE — PAYMENT OF DEBTS.

Before the Court will make an order for the payment of debts of a lunatic, an inventory of the lunatic's estate must be presented in order that the Court may be informed of the nature and extent of the estate. A claim for maintenance of a lunatic while confined in an asylum has priority over the claims of creditors. [Re Seager Hunt, [1906] 2 Ch.D. 295, Re Pink, 23 Ch.D. 577. referred to.]

Re Main, 7 W.W.R. 1152.

(§ VI-33) — LUNATIC'S ESTATE — SALE OF LAND.

The administrator of a lunatic appointed by the Lieutenant-Governor-in-Council has power to deal with the real estate of the lunatic without application to the Court, whereas in the case of a guardian appointed by the Court, the Rules of Court provide that the real estate can only be sold by order of the Court after application made to the Court by the guardian.

Re Roland Polgreen, 7 W.W.R. 1184.

INCORPORATORS.

See Corporations and Companies.

INCORPOREAL RIGHTS.

Condemnation of, see Eminent Domain; Damages, III L.

See Easements; Licenses.

INDECENCY.

(§ I-5) — INDECENT EXPOSURE—INTENT TO INSULT.

On the trial of summary conviction proceedings for an indecent act charged to have been wilfully committed with intent to insult the informant and his friends who were with him, and also charged to have been committed in a public place, the proof

of the former makes it immaterial whether the place specified was one to which the public had access or not, and the defendant may be convicted under sub-sec. (b) of Cr. Code, sec. 205; the latter sub-section refers to an offence committed in any place, whether public or private, where there is the intention to insult or offend one or more persons as distinguished from the public generally.

Berman v. Kocurka, 25 Can. Cr. Cas. 44.

INDEMNITY.

Bond for, see Bonds, II; Guaranty; Principal and Surety.

Indemnity insurance, see Insurance.

To workmen under compensation statutes, see Master and Servant, V.

INDEPENDENT CONTRACTORS.

Liability for acts of, see Highways; Municipal Corporations; Master and Servant, III; Contracts.

Liability for negligence, see Negligence.

INDIANS.

Sale of liquor to, see Intoxicating Liquors.

INDICTMENT, INFORMATION AND COMPLAINT.

I. FORM; REQUISITES.

II. SUFFICIENCY OF ALLEGATIONS.

- A. In general.
- B. Intent; knowledge.
- C. Negation of defences or exceptions.
- D. Duplicity; repugnancy.
- E. Description of offence.
- F. Amendment.
- G. Sufficiency to support conviction.

III. JOINDER OF COUNTS OR PERSONS.

IV. QUASHING.

Rights as to place of trial, see Venue.

Procedure generally, see Criminal Law, II.: Summary Convictions.

Annotation.

Criminal information; functions and limits of prosecution by this process: 8 D.L.R. 571.

I. Form; requisites.

(§ I-2)—INFORMATION BEFORE JUSTICE—STATEMENT OF BELIEF.

If the reasonable or probable grounds for believing that an offence has been committed are anything less than the actual knowledge of an eye-witness, the written and sworn information under Cr. Code, sec. 654, should be worded accordingly, and the informant not allowed to take a positive oath that the offence was committed.

White v. Dunning, 21 D.L.R. 528, 8 S.L.R. 76, 24 Can. Cr. Cas. 85, 7 W.W.R. 1210, 30 W.L.R. 585.

(§ I-2)—INFORMATION ON SUMMARY TRIAL.

A conviction by two Justices sitting together and having the powers of a magis-

trate for summary trial without the consent of the accused for an offence under Cr. Code, sec. 773, is not invalid because the information was taken before one only of the two Justices, as by Cr. Code, sec. 796, one Justice has power to remand before two Justices for the purposes of a summary trial under Part XVI of the Cr. Code.

Rex v. James, 25 D.L.R. 476, 25 Can. Cr. Cas. 23, 9 A.L.R. 66, 9 W.W.R. 235, 32 W.L.R. 528.

(§ I-2)—AMENDMENT OF INFORMATION—RE-SWEARING.

It is not essential that an information before a magistrate should be re-sworn after being amended at the hearing, if the amendment merely gives greater particularity or certainty to the charge without changing the charge to an offence of a different kind or alleging it as of a time or place materially different from that first alleged.

Rex v. Tally, 21 D.L.R. 651, 23 Can. Cr. Cas. 449, 8 A.L.R. 453, 7 W.W.R. 1178, 30 W.L.R. 396.

(§ I-4)—DISCRETION OF ATTORNEY-GENERAL.

In exercising the discretion given to the provincial Attorney-General in Saskatchewan and Alberta, under Cr. Code 873A, as to whether a formal charge shall be preferred on the depositions on which there has been a committal for trial, the Attorney-General has practically to perform what would be Grand Jury functions in provinces where there is a Grand Jury system. [Re Criminal Code, 16 Can. Cr. Cas. 549, 43 Can. S.C.R. 434, referred to.]

Rex v. Weiss, 23 D.L.R. 710, 23 Can. Cr. Cas. 460, 8 S.L.R. 74, 7 W.W.R. 1160, 30 W.L.R. 458.

(§ I-4)—LEAVE TO PREFER FORMAL CHARGE.

Leave to a private prosecutor to prefer a charge in Saskatchewan upon which, in lieu of an indictment, the accused would in that province be triable should be refused if the Attorney-General has instructed his agent not to prefer a charge although there has been a committal for trial for the offence, unless such a strong *prima facie* case is disclosed on the depositions as to suggest an attempt to stifle a proper prosecution.

Rex v. Weiss, 23 D.L.R. 710, 23 Can. Cr. Cas. 460, 8 S.L.R. 74, 7 W.W.R. 1160, 30 W.L.R. 458.

II. Sufficiency of allegations.

E. DESCRIPTION OF OFFENCE.

(§ II E 1-26)—INMATE OF BAWDY HOUSE—STATING LOCATION OF HOUSE.

A charge of being an inmate of a common bawdy house under Cr. Code, sec. 229 A, which is tried by a magistrate under Cr. Code, sec. 774, without the consent of the accused, is not invalid because the precise locality of the house is not designated in addition to the town or territory over which the magistrate had jurisdiction, but the

magistrate may order the prosecution to give particulars. [R. v. Crawford, 6 D.L.R. 380, 20 Can. Cr. Cas. 49; and R. v. Mickleham, 10 Can. Cr. Cas. 382, applied.]

Rex v. James, 25 D.L.R. 476, 25 Can. Cr. Cas. 23, 9 A.L.R. 66, 9 W.W.R. 235, 32 W.L.R. 528.

(§ II E 2—30)—STATUTORY LANGUAGE.

It is sufficient to describe in an information an offence in the words of the section of the Act which creates it.

Re Wagner, 9 W.W.R. 1000, 25 Can. Cr. Cas.

(§ II E 3—40)—COMMON BAWDY HOUSE.

An information in a summary proceeding charging the keeping of "a bawdy house," and omitting to describe such as a "common" bawdy house, is bad as not disclosing a legal offence, and the charge thereon should be dismissed; that it is a "common bawdy house" is an essential ingredient of the offence under Cr. Code, sec. 228, which declares a "common bawdy house" to be a disorderly house the keeping of which is punishable thereunder, and the omission of the description in that particular is not cured by a plea to the charge nor is there power in the magistrate to amend such a defect of substance.

Rex v. Jousseau, 24 Can. Cr. Cas. 417.

(§ II E 3—44) — CONSPIRACY — ASSISTING ALIEN ENEMY.

A conviction against the husband only upon an indictment of husband and wife, upon which the wife was acquitted, for conspiracy to aid and comfort a public enemy at war with the King by inciting and assisting a subject of the enemy country to leave Canada and join the enemy's forces, is not sustainable where there was no evidence of the husband conspiring with any person other than the person named in the indictment as the person incited and assisted, although the indictment charged that the two defendants did maliciously and traitorously conspire, confederate and agree with each other "and with others," for if it had been intended to cover a charge of a conspiracy with the assisted alien he should have been specifically named; the words "with others" must, in that connection, be construed as excluding the person specifically named as the alien who was assisted to leave Canada and as referring to persons unknown. [R. v. Johnston, 6 Can. Cr. Cas. 232; R. v. Ahlers, [1915] 1 K.B. 616, referred to.]

Rex v. Nerlich, 25 D.L.R. 138, 24 Can. Cr. Cas. 256, 34 O.L.R. 298, 8 O.W.N. 592.

[See R. v. Oma, 25 D.L.R. 670, 25 Can. Cr. Cas. 73.]

(§ II E 3—44)—COMMON ASSAULT.

An information charging that the accused "threatened" the complainant with an axe, "contrary to sec. 291 of the Criminal Code," is sufficient to charge the offence of common assault for which that section of the Criminal Code provides.

Rex v. Tally, 21 D.L.R. 651, 23 Can. Cr. Cas. 449, 8 A.L.R. 453, 7 W.W.R. 1178, 30 W.L.R. 396.

F. AMENDMENT.

(§ II F—55)—DIRECTION OF ATTORNEY-GENERAL.

When an amendment is made at the request of the Attorney-General to a charge brought in Alberta where there is no grand jury system, the amended charge has the same validity as the former charge, unaffected by a consideration as to whether an indictment could be similarly amended by the Court in a matter of substance. [R. v. Standard Soap Co., 12 Can. Cr. Cas. 290, referred to.]

Rex v. Wallace, 24 D.L.R. 825, 8 A.L.R. 472, 24 Can. Cr. Cas. 95.

III. Joinder of counts or persons.

(§ III—65)—MISJOINDER OF PERSONS.

There is a misjoinder which nullifies the information and the summons thereon where three persons are jointly charged with a vagrancy offence as being a night walker. (Cr. Code, sec. 238, sub-sec. (i)). [R. v. Hagerman, 31 Ont. R. 637, referred to.]

Rex v. Lachance, 24 Can. Cr. Cas. 421.

(§ III—65)—ADDED COUNTS FOR CHARGES NOT BEFORE MAGISTRATE—RIGHT TO SUMMARY TRIAL.

Where the indictment has been preferred at the direction of the Attorney-General (Cr. Code, sec. 873), in a form which includes counts for other offences as well as the offence charged in the information before the magistrate, and for which he committed the accused, the latter cannot object to plead on the ground that he elects trial before the magistrate on such of the charges as are subjects of summary trial if the magistrate had no jurisdiction of summary trial on the information before him, at least where the defence does not shew that the magistrate was one of the class acquiring jurisdiction under Code, sec. 777, sub-sec. (2), as amended 1909.

Rex v. Pawliski, 25 D.L.R. 527, 24 Can. Cr. Cas. 147, 31 W.L.R. 675.

(§ III—66)—DIRECTION OF ATTORNEY-GENERAL.

The inclusion in the indictment of a count which is not supported by the depositions taken on the preliminary inquiry is validated by obtaining the direction of the Attorney-General to the preferring of the indictment in that form.

Rex v. Pawliski, 25 D.L.R. 527, 24 Can. Cr. Cas. 147, 31 W.L.R. 675.

IV. Quashing.

(§ IV—70)—FOR MISJOINDER OF DEFENDANTS.

An objection to summary conviction proceedings for misjoinder of three persons accused under one complaint for an offence several in its nature will be maintained even

after plea as it forms a ground of nullity of the proceedings and not a mere irregularity which might be waived. [R. v. Berry, 3 Cox C.C. 127; R. v. Clarke, 20 Ont. R. 642; and Martin v. Mackonachie, 3 Q.B.D. 775, referred to.]

Rex v. Lachance, 24 Can. Cr. Cas. 421.

(§ IV—70)—MOTION TO QUASH INDICTMENT—REFUSAL—RENEWAL AFTER DISAGREEMENT OF JURY—CR. CODE, SECS. 216, 872, 873, 898.

Rex v. Perkins, 8 O.W.N. 600.

(§ IV—80)—SPECIFIC GROUNDS.

On a motion to quash an indictment on the ground that the grand jury finding it was not properly constituted, the objecting party must specifically set forth his grounds of objection, and will not be given the benefit of a ground not specified.

Rex v. Morrow, 24 Can. Cr. Cas. 310.

INDORSEMENT.

Of bills and notes generally, see Bills and Notes; Cheques.

Of stock certificate, see Corporations and Companies.

INFANTS.

I. IN GENERAL; CONTROL; SUPPORT; RIGHTS AND LIABILITIES.

- A. In general.
- B. Support of, and care for.
- C. Custody.
- D. Disabilities and liabilities.

II. SALE, LEASE OR MORTGAGE OF REAL ESTATE.

III. ACTIONS.

Relation of parent to, see Parent and Child.

As to guardianship, see Guardian and Ward.

Injuries to, see Negligence.

Recovery for death, see Death.

Employment of, and injuries arising from, see Master and Servant.

Determination of custody, see Habeas Corpus.

Annotation.

Disabilities and liabilities; contributory negligence of children: 9 D.L.R. 522.

I. In general; control; support; rights and liabilities.

B. SUPPORT OF, AND CARE FOR.

(§ I B—5)—NIECE IN CUSTODY OF UNCLE—PRESUMPTION AS TO GRATUITOUS MAINTENANCE—SUCCESSION RIGHTS.

In the case of a child brought up by a relation, the Court may, according to the circumstances, decide that the relation has no right to make a claim for the expenses of board, maintenance or education; nevertheless, gratuitous maintenance is never presumed. Where a young girl, an orphan, is adopted by her uncle, with whom she lives

for a number of years, having in the meantime inherited \$300, which she gives to him, and afterwards dies intestate, her heirs have no right to claim that amount, which should remain in the possession of the defendant for payment of the expenses for her illness, care and maintenance.

Joly v. Piche, 47 Que. S.C. 9.

(§ I B—5)—MAINTENANCE AND EDUCATION—DIRECTIONS OF WILL—APPLICATION OF INTEREST UPON SHARE OF ESTATE—ENCROACHMENT UPON CORPUS—REFUSAL TO ALLOW.

Re Vidal, 9 O.W.N. 115.

(§ I B—8)—CRIMINAL CHARGE OF CONTRIBUTING TO DELINQUENCY OF JUVENILE.

No legal offence is disclosed in an information charging a woman with knowingly and wilfully "keeping company with" a man and thereby depriving him from keeping his children under proper parental control and contributing to their being or becoming juvenile delinquents; sec. 29 of the Juvenile Delinquents Act, 1908, 7 & 8 Edw. VII. Can., ch. 40, does not support such a charge.

Rex v. Curry, 24 Can. Cr. Cas. 340, 8 O.W.N. 512.

C. CUSTODY.

(§ I C—10)—POWER TO CHANGE CUSTODY AWARDED BY EXTRA-TERRITORIAL DECREE.

A father may be given the custody of his child, notwithstanding the existence of an order of an extra-territorial Court awarding such custody to the mother upon a decree for divorce obtained by misleading and fraudulent testimony of the mother (no personal service having been made of the petition), at any rate where it is impossible for the Court to say that it is to the benefit of the child that she should remain with the mother.

Ryser v. Ryser, 7 W.W.R. 1275.

(§ I C—10)—CUSTODY—CHILDREN'S AID SOCIETY—CHILDREN'S PROTECTION ACT OF ONTARIO, R.S.O. 1914, ch. 231.

Re Wardle, 8 O.W.N. 517.

(§ I C—11)—CUSTODY—SEPARATION OF PARENTS—RIGHT OF FATHER TO CUSTODY OF GIRL OF TEN—WELFARE OF INFANT—COSTS.

Re Scarth, 9 O.W.N. 143.

(§ I C—11)—CUSTODY—SEPARATION OF HUSBAND AND WIFE—AGREEMENT AS TO CUSTODY OF CHILD—WELFARE OF CHILD.

Re Armstrong, 8 O.W.N. 567.

(§ I C—11)—CUSTODY—APPLICATION OF FATHER—FACTS NOT SUFFICIENTLY SHEWN—LEAVE TO RENEW UPON FURTHER MATERIAL.

Re Richardson, 9 O.W.N. 142.

D. DISABILITIES AND LIABILITIES.

(§ I D—16)—DELITS—MISAPPROPRIATION OF FUNDS—SETTLEMENT FOR AS AFFECTED BY INFANCY.

A minor is not exempt from liability for

obligations arising from his délits and quasi-délits. Thus the minor who commits frauds on his employer by appropriating the money which he was ordered to collect, and, being discovered, settles with and repays his employer, cannot afterwards claim repayment of the money on the ground of his minority alone.

Lachapelle v. Guay, 47 Que. S.C. 346.

(§ I D 2—25)—ASSIGNMENT OF INTEREST IN LAND — DISAFFIRMANCE — REASONABLE TIME.

An assignment by an infant of his interest in a purchase of land not prejudicial to the infant's interest is merely voidable; but a lapse of three years after his attainment of majority is not a reasonable time for the exercise of his right of avoidance, so as to entitle him to the enforcement of a parol trust founded thereon. [Doe dem Bromfield v. Smith, 2 T.R. 436; Edwards v. Brudenell, [1893] A.C. 360, applied.]

Shepard v. Bruner, 24 D.L.R. 40, 31 W.L.R. 721, reversing 19 D.L.R. 869.

(§ I D 2—25)—PURCHASE OF LAND—REPUDIATION—VENDOR'S REFUSAL TO ACCEPT INFANT'S MORTGAGE.

An infant, who enters into a contract for the purchase of land of a vendor who is unaware of his infancy, cannot compel the vendor to accept a mortgage, under the terms of the contract, for the balance of unpaid purchase price which has been executed by the infant; nor may infancy be set up as a ground for the repudiation of the contract to recover the moneys paid thereon by the infant after the latter has assumed potential ownership of the sold premises. [Short v. Field, 32 O.L.R. 395, followed.]

Robinson v. Moffatt, 25 D.L.R. 462, 35 O.L.R. 9, 9 O.W.N. 99, 209.

(§ I D 2—28)—PURCHASE OF LAND—REPUDIATION—RIGHT TO REPAYMENT.

Although an infant is not compellable to complete a contract, yet when he has paid money under it he cannot recover it back unless he can shew that fraud has been practised upon him. Wilson v. Kearse (1800), Peake Add. Cas. 196, and Holmes v. Blogg, 8 Taunt. 35, 2 J.B. Moore 552, approved and applied to a case where the plaintiff, an infant, agreed to purchase from the defendant a house and lot and paid a deposit at the time the agreement was signed, and where the evidence negatives any misrepresentation on the part of the defendant, and shewed that the plaintiff took possession of and controlled the property.

Short v. Field, 32 O.L.R. 395.

[Followed in Robinson v. Moffatt, 25 D.L.R. 462.]

(§ I D 2—31)—REPUDIATION OF SALE—RETURN OF DEPOSIT.

Held also, that notwithstanding the infancy of T., the deposit paid to him might be recovered. Lord Tenterden's Act is in force in the province of Saskatchewan.

Molyneux v. Traill, 9 W.W.R. 137, 32 W.L.R. 292.

II. Sale, lease or mortgage of real estate.

(§ II—37)—UNDIVIDED INTEREST IN LAND—MOTION FOR AUTHORIZATION BY COURT OF CONVEYANCE—SECURITY FOR PURCHASE-MONEY—OFFICIAL GUARDIAN—REFUSAL OF MOTION.

Re Mack, 8 O.W.N. 74.

III. Actions.

(See previous Annual Digests.)

INFORMATION.

For criminal offence, see Indictment, etc.; Summary Conviction; Criminal Law.

INFRINGEMENT.

Of copyright, see Copyright.

Of trade-mark, see Trade-mark; Trade-name; Patents.

Restraining infringement, see Injunction.

INHERITANCE.

See Descent and Distribution; Wills; Executors and Administrators.

INHERITANCE TAX.

See Taxes, V.

INJUNCTION.

I. RIGHT TO AND WHEN GRANTED.

- A. In general.
- B. Contract rights; covenant.
- C. Transfer or disposition of property.
- D. Illegal or tortious acts; crimes.
- E. Taking of, injury to, or trespass upon, real property.
- F. Water rights.
- G. As to corporate matters; associations.
- H. As to office; elections.
- I. Against legal proceedings.
- J. Against officers generally.
- K. Against taxes or assessments.
- L. As to parks, highways and railroads.
- M. As to patents, copyrights, trade-marks, trade-names and imitations.

II. INTERLOCUTORY AND INTERIM INJUNCTIONS.

III. PROCEDURE.

Review of discretion as to, see Appeal, VII.

Attorney-General as necessary party to enjoin exercise of public franchise by corporation, see Parties.

Jurisdiction of Courts, as to generally, see Courts.

Annotation.

Injunction; when injunction lies: 14 D.L.R. 460.

I. Right to and when granted.

A. IN GENERAL.

(§ I A—4)—DANGER AND INCONVENIENCE FROM QUARRYING STONE.

One who leases his immoveable for the

taking out stone from a quarry by dynamite, may, if the lessee carries on his operations in an imprudent and dangerous manner, be subject to an injunction from exploiting the quarry, and by taking means to prevent all danger and inconvenience to the petitioner, his family and his property. This principle has a stronger application if the owner directly participates in the exploiting of the quarry by receiving a fixed price on each ton of stone taken out.

Lachance v. Cauchon, 24 Que. K.B. 421.

[Appeal to Canada Supreme Court quashed.]

(§ I A—10)—RESTRAINING MAYOR'S ORDERS FOR EXCLUSION FROM CITY HALL—NEWS-PAPER REPORTERS.

A newspaper reporter has a right of entry into the city hall of the city in which the newspaper is carried on, both as a representative of the publishers and as a resident of the city, and the enforcement of an order given by the Mayor of the city to the city hall officials excluding newspaper reporters from the city hall will be restrained by injunction.

Journal Printing Co. v. McVeity, 21 D.L.R. 81, 33 O.L.R. 166, 7 O.W.N. 796.

B. CONTRACT RIGHTS; COVENANT.

(§ I B—23)—RESTRICTION UPON SERVANT'S EXERCISE OF TRADE FOR LIMITED PERIOD—TRADE SECRETS—RESTRAINT OF TRADE.

William Shannon Co. v. Crane, 25 D.L.R. 843, 9 O.W.N. 293.

E. TAKING OF, INJURY TO, OR TRESPASS UPON, REAL PROPERTY.

(§ I E—43)—TRESPASS—STATUTORY RIGHT.

Damages are not assessable in a trespass action where the defendants have by statute a right to do legally (on complying with certain prerequisites) the very thing which constitutes the trespass. The proper course is by injunction restraining the defendants from continuing the trespass unless they acquire title and proceed to have the compensation or damages determined under the provisions of the Railway Act, within a reasonable time. [Holmested v. C.N.R. Co., 20 D.L.R. 577, varied.]

Holmested v. C.N.R. Co., 22 D.L.R. 55, 31 W.L.R. 896, 19 Can. Ry. Cas. 105.

F. WATER RIGHTS.

(§ I F—58)—POLLUTION—INJURY TO FISHING RIGHTS.

Where it is shewn that the defendant was polluting the water by operating an iron mine and thereby injuring the fishing rights of the plaintiff, an injunction was granted; but as the works of the defendant were important, the Court ordered that the injunction should not become operative for over three months, in order that the defendant might have an opportunity to prevent the pollution by alteration to its plant.

Nepisiquit &c. Co. v. Can. Iron Corp., 42 N.B.R. 387.

(§ I F—59a)—DEFECTIVE DRAINAGE.

The provisions of sec. 166 of the Railway Act (B.C.) 1911, ch. 44, authorizing the Minister of Railways to make orders in cases of defective drainage, do not deprive the Courts of jurisdiction in a proper case to grant an injunction. (Dictum of Irving, J.A.)

McCrimmon v. B.C. Electric R. Co., 24 D.L.R. 368, 8 W.W.R. 1289, 32 W.L.R. 81, affirming 20 D.L.R. 834, 7 W.W.R. 137.

G. AS TO CORPORATE MATTERS; ASSOCIATIONS.

(§ I G—60)—ULTRA VIRES ACT OF MUNICIPALITY—CARRYING ON MOVING PICTURE BUSINESS—INTEREST OF RATEPAYERS.

An injunction will be granted at the instance of a ratepayer having a special interest as a competitor in the moving picture business, who sues on behalf of himself and all other ratepayers, to restrain a municipal corporation from carrying on a moving picture business in the township hall under the guise of a lease to the township's agent made with the intention of evading the law; and the action may be maintained without first quashing the township by-law under which the illegal lease purported to be made.

Crichton v. Tp. of Chapleau, 22 D.L.R. 796, 8 O.W.N. 67.

(§ I G—60)—MUNICIPAL MATTERS—ULTRA VIRES ACTS—INTEREST OF RATEPAYER.

The fact that a complaining ratepayer is the agent of a rival company, and that he would receive a commission if his company gets the contract, is too remote an interest to entitle him to an injunction against a municipality to prevent its execution of a contract ultra vires.

Dubuc v. Montreal & Aztec Oil &c. Co., 48 Que. S.C. 366.

(§ I G—60)—INTERNAL MANAGEMENT OF ASSOCIATION—MEDICAL COLLEGES—ELECTION OF COUNCIL—VALIDITY—PARTIES—STATUTORY REMEDY—MEDICAL PROFESSION ACT, CH. 28.

Park v. MacDonald, 25 D.L.R. 792, 8 W.W.R. 431.

J. AGAINST OFFICERS GENERALLY.

(§ I J—84)—MUNICIPAL EXPENDITURES—USE OF PUBLIC FUNDS.

A municipal council may be enjoined from acting upon a resolution passed for the making of expenditures which could be legally made only on the passing of a by-law voted upon and passed by the burgesses.

Howson v. City of Medicine Hat; Yuill v. City of Medicine Hat, 22 D.L.R. 72, 30 W.L.R. 319.

K. AGAINST TAXES OR ASSESSMENTS.

(§ I K—90)—WRONGFUL SEIZURE FOR TAXES—REMEDY FOR DAMAGES.

The Court will not continue an interim

injunction restraining the seizure for taxes of property claimed by another where there is an adequate remedy at law. [Dominion Express Co. v. City of Brandon, 19 Man. L.R. 257, followed.]

Smart Hardware & Contracting Co. v. Town of Melfort, 24 D.L.R. 540, 9 W.W.R. 134, 32 W.L.R. 382.

L. AS TO PARKS, HIGHWAYS AND RAILROADS.

(§ I L—107)—STREET RAILWAY—INJURY TO ADJOINING OWNER—RESTRICTING ACCESS.

A property owner on the street affected who would sustain special damage because of restricted access to his property if an electric railway line were extended along the adjoining street, may sue the railway company to restrain the construction, although authorised by the municipality, if no permission has been obtained from the Ontario Railway and Municipal Board by the company subject to its authority under the Ontario Railway Act, 3 & 4 Geo. V. ch. 36, sec. 250.

Mitchell v. Sandwich, Windsor, etc., R. Co., 22 D.L.R. 531, 32 O.L.R. 594, 7 O.W.N. 508.

II. Interlocutory and interim injunctions.

(§ II—134)—NECESSARY ALLEGATIONS—DIS-SOLUTION OF.

A plaintiff seeking ex parte an interim injunction is bound to disclose on the affidavits and material submitted to the Court all the material facts within his knowledge without either misrepresentation or concealment, and failure to do so is in itself a ground for dissolving the injunction; the plaintiff may, however, be given leave to apply for another injunction on the merits. [Mickelson v. Mickelson, 15 Can. Ex. 276, referred to; Fitch v. Rochford, 18 L.J. Ch. 458, applied.] Mickelson, Shapiro Co. v. Mickelson Drug Co., 23 D.L.R. 451, 8 W.W.R. 153, 30 W.L.R. 798.

(§ II—134)—MOTION TO CONTINUE—FAILURE TO DISCLOSE MATERIAL FACTS.

In an appeal from an order continuing an interim injunction on the ground of failure to disclose material facts on the ex parte application for the interim injunction, the Court, where all the material facts were before the Judge on the motion to discontinue, dismissed the appeal without considering whether or not all the material facts had been disclosed on the ex parte application.

McDermott v. Oliver, 43 N.B.R. 533.

(§ II—134)—INTERIM INJUNCTION—COMPANY—PURCHASE OF PROPERTY—ACTION BY SHAREHOLDER TO RESTRAIN—EVIDENCE—REFUSAL TO CONTINUE INJUNCTION—SPEEDY TRIAL.

Hawkins v. Miller, 7 O.W.N. 752.

(§ II—134)—ACTION TO SET ASIDE SALE OF PROPERTY—FRAUD AND MISREPRESENTATION—INTERIM INJUNCTION—CONTINU-

ANCE—TERMS—PAYMENT INTO COURT—SPEEDY TRIAL.

Peppiatt v. Reeder, 7 O.W.N. 753.

(§ II—134)—PRESERVATION OF ASSETS SUBJECT TO EXECUTION—JUDGMENT SET ASIDE—CONTINUANCE OF INTERIM INJUNCTION PENDING APPEAL—PRACTICE—COSTS.

Levinson v. Gault and Mackey (No. 2), 9 O.W.N. 16.

III. Procedure.

(§ III—141)—NOTICE—SECURITY.

If after obtaining an interlocutory injunction the petitioner does not cause it to be issued but contents himself with giving notice to the defendant of the judgment granting it and furnishing the requisite security, the defendant cannot set up this ground after the proceedings are at an end and a permanent injunction has been granted.

Lachance v. Cauchon, 24 Que. K.B. 421.

INNKEEPERS.

Liquor license to, see Intoxicating Liquors.

(See previous Annual Digests.)

INSANE PERSONS.

See Incompetent Persons.

INSOLVENCY.

I. IN GENERAL.

II. UNLAWFUL PREFERENCES.

III. WHAT PASSES TO ASSIGNEE OR TRUSTEE.

IV. CLAIMS AGAINST AND DISTRIBUTION OF ESTATE.

V. DISCHARGE.

VI. PROOF OF.

As to assignment for creditors, see Assignments for Creditors.

Of banks, see Banks, IV.

Of railway, see Railway, VII.

Of corporation, see Corporations and Companies, VI.

Dissolution of partnership, see Partnership.

As to receivers, see Receivers.

I. In general.

(§ I—3)—WHAT CONSTITUTES.

A person is to be deemed insolvent within the meaning of the Assignments Act, Alta., if he does not pay his way and is unable to meet the current demands of his creditors and if he has not the means of paying them in full out of his assets realized upon a sale for cash or its equivalent. [Warnock v. Kloepper, 14 Ont. R. 288, 292, 15 A.R. 324, 18 Can. S.C.R. 701, referred to.]

Walter v. Adolph Lumber Co., 23 D.L.R. 326, 8 W.W.R. 351.

II. Unlawful preferences.

(§ II—5)—ASSIGNMENTS AND PREFERENCES—BILLS OF SALE—INSOLVENT BARGAINOR—

CONSIDERATION—PAYMENT OF COMPOSITION TO CREDITORS—INVALIDITY AGAINST NON-ASSENTING CREDITORS — ASSIGNMENTS AND PREFERENCES ACT, R.S.O. 1914, CH. 134, SEC. 5 (1).
Hersig v. Hall, 8 O.W.N. 242.

III. What passes to assignee or trustee. (See previous Annual Digests.)

INSPECTION.

Of documents, see *Discovery and Inspection*.

Demonstrative evidence, see *Evidence*.

INSTRUCTIONS TO JURY.

See *Trial*.

Ground for new trial, see *New Trial*.

INSURANCE.

I. COMPANIES, OFFICER, AND AGENTS.

- A. Right and manner of doing business.
- B. Foreign corporations.
- C. Dissolution; forfeiture; insolvency; rights of members of mutual companies.
- D. Officers and agents.

II. INSURABLE INTEREST.

- A. In property.
- B. In life.

III. THE POLICY OR CONTRACT.

- A. In general.
- B. Reformation; rescission.
- C. Cancellation; surrender; paid-up policy.
- D. Construction.
- E. Warranties; representations; conditions; description.
- F. Forfeiture.
- G. Reinstatement.
- H. Premiums and assessments.

IV. TRANSFER OF POLICY OR OF INTEREST THEREIN.

- A. Assignment generally.
- B. Change of beneficiary.

V. WAIVER; ESTOPPEL.

- A. Of insured beneficiary.
- B. Of insurer.

VI. THE LOSS; REMEDIES OF THE ASSURED.

- A. Notice; proofs; arbitration.
- B. Risks and causes of loss, injury or death.
- C. Extent of injury or loss; of recovery.
- D. Interest in proceeds.
- E. Defences; release.
- F. Subrogation.
- G. Apportionment or contribution.
- H. Actions; enforcing payment.

VII. REINSURANCE.

VIII. GUARANTY POLICIES.

Guaranty or fidelity insurance, see *Bonds*.

Annotations.

Insurance; fire insurance; change of location of insured chattels: 1 D.L.R. 745.

Effect of war on enemy insurance com-

panies and enemy's right to claim insurance: 23 D.L.R. 375, 379.

I. Companies, officers, and agents.

A. RIGHT AND MANNER OF DOING BUSINESS.

(§ I A—9)—LICENSE FEE—NAME OF OTHER COMPANY ON POLICY.

The plaintiff, agent of the National Insurance Company of Hartford, Connecticut, carrying on the company's business in the city of St. John, issued policies with the heading, "Atlantic Fire Underwriters' Agency." The policies continued: "by this policy the National Life Insurance Company of Hartford, Connecticut, in consideration," etc., "does insure," etc. The policies are signed by the president and secretary of the National, and are the policies of that company. There is no association of underwriters known as the Atlantic Fire Underwriters' Agency, it being merely a name adopted by the National in issuing its policies. Under the Act of 5 Geo. V., ch. 94 (1913), amending 3 Geo. V. ch. 55 (1913), by adding to sec. 2, sub-sec. (g), providing that every agent who issues a policy of any company and causes or permits to be represented thereupon the name of any other insurance company or association, whether the same be connected with responsibility under the policy or not, shall pay a fee of \$100 for each company or association which he represents. The agent of the National paid under protest to the city of St. John, in addition to the fee for that company payable under 3 Geo. V., ch. 55, a fee of \$100 for the Atlantic Fire Underwriters' Agency:—Held, that the name Atlantic Fire Underwriters' Agency, not being the name of any other insurance company, insurance association, underwriters' agency or other mode of association of underwriters, the plaintiff was not liable for the payment of the additional fee.
Howard v. City of St. John, 43 N.B.R. 521.

D. OFFICERS AND AGENTS.

(§ I D—20)—BROKERS—FOREIGN COMPANIES—DUTIES AS TO REMITTING PREMIUMS.

An insurance broker who undertakes with his customer to place fire insurance in foreign companies not authorized to transact business in Ontario, and who is provided by the customer with the funds with which to pay the premium, is under an obligation to procure binding contracts of insurance, and to do all that was necessary on his part to procure them; his failure to pay the premium to one of the foreign companies whereby it was enabled to repudiate liability under the policy delivered will make him liable to the insured for the loss occasioned thereby.

Antiseptic Bedding Co. v. Gurofski, 21 D.L.R. 483, 33 O.L.R. 319, 8 O.W.N. 92.

[Referred to in *Mowat v. Goodall*, 24 D.L.R. 781.

(§ I D—20)—BREACH OF AGENCY CONTRACT—OVERRIDING COMMISSIONS.

An agency contract between an insurance

company and its district agent stipulating the forbearance of the company to take on sub-agents employed by him nor override his commissions paid them does not, upon the breach thereof by the company, entitle the agent to recover the commissions he would have earned on the applications secured by such sub-agents, where it appears that the agent subsequently agreed to accept from the company a smaller percentage in satisfaction of what he might have been originally entitled to.

Pearlman v. Great West Life, 22 D.L.R. 423, 32 W.L.R. 22.

(§ I D—20)—BROKERS—COMMISSIONS—REPAYMENT UPON CANCELLATION OF POLICY.

The mandate given to an insurance broker is not gratuitous, and if the broker effects the contracts with which he is charged by the insured he is entitled to his commission. The insured, who under the name of premium pays to this agent a sum equal to the amount of the premium and his commission, and who later cancels the contract, has the right to be repaid by the agent the same proportion upon the commission as the agent can claim from the insurance company upon the premium.

Prévost v. Painchaud, 47 Que. S.C. 505.

(§ I D—22)—UNAUTHORIZED ACCEPTANCE OF RISK—LIABILITY OF AGENT.

An insurance agent who exceeds his authority in underwriting a risk at a lower rate than that authorized by the insurance company will, in the event of loss, be liable to the company to the extent of the loss it is made to pay.

Globe & Rutgers Fire Ins. Co. v. Wetmore & Co., 23 D.L.R. 33, 49 N.S.R. 55.

(§ I D—22)—RIGHT TO SUE FOR PREMIUMS.

An insurance agent charged by the insurance company for the premiums of all policies written by him, may sue, in his own name, for the recovery of premiums charged by him against his sub-agent. [Antiseptic Bedding Co. v. Gurofski, 21 D.L.R. 483, referred to.]

Mowat v. Goodall, 24 D.L.R. 781, 9 W.W.R. 171, 31 W.L.R. 537.

[See also Mowat v. Goodall, 24 D.L.R. 891.]

(§ I D—22)—POWER TO BIND COMPANY.

When the application for insurance is prepared by the agent of the company, it should be considered to be the act of the company.

Lacombe v. La Protection, 48 Que. S.C. 531.

(§ I D—23)—PERSONAL LIABILITY OF AGENT—PREMIUM NOTE.

An insurance agent who accepts from a person taking out a policy a note to his order representing the amount of the premium, and by endorsement transfers it to the insurance company which he represents and to whom he is indebted, is liable to the company for the amount of the note in the absence of proof that he had been authorized to accept

it or that the company had accepted it in payment of the premium.

La Sauvegarde v. Daoust, 48 Que. S.C. 394.

(§ I D—26)—ACTION BY INSURANCE AGENTS TO RECOVER MONEYS RETAINED BY SUB-AGENTS—COMMISSIONS.

Page, Harrison v. Peverett, 32 W.L.R. 715.

II. Insurable interest.

A. IN PROPERTY.

(§ II A—33)—CONDITIONAL VENDOR—REPRESENTATION AS TO OWNERSHIP.

When the owner of certain furniture sells them and immediately takes a lease of the same moveable from the buyer with a right of redemption at the expiry of the lease, he does not retain in them an insurable interest; and if he obtains a policy of insurance, declaring that he is the proprietor of these moveables, the policy shall be declared null and void.

Bacon v. Providence, Washington, Ins. Co., 47 Que. S.C. 71.

(§ II A—33)—OWNERSHIP—PURCHASER AT SHERIFF'S SALE.

A purchaser (adjudicataire) at a sheriff's sale becomes proprietor of the lot sold at the moment it is adjudicated to him as the last and highest bidder, although the completion of the title is suspended for a time. And from that moment the last proprietor upon whom the sale was made ceases to have any insurable interest in the building sold.

Bacon v. Insurance Co. of North America, 47 Que. S.C. 74.

III. The policy or contract.

A. IN GENERAL.

(§ III A—41)—HOUSE OF ILL-FAME—ILLEGALITY.

A policy of fire insurance where it appears upon the face of the policy that it has been effected upon a house of ill-fame and its contents is unenforceable. [Morin v. Anglo-American Fire Insurance Co., 3 A.L.R. 121, disapproved; Pearce v. Brooks, L.R. 1 Ex. 213, applied.] Per curiam, Idington and Duff, JJ., dissentientibus.

Nakata v. Dominion Fire Ins. Co., 52 Can. S.C.R. 294, 9 W.W.R. 1084, reversing 21 D.L.R. 26, 8 W.W.R. 343, 9 A.L.R. 47, 31 W.L.R. 126.

(§ III A—44)—INTERIM ORAL AGREEMENT PRELIMINARY TO POLICY—BINDING EFFECT.

A verbal interim agreement by the agent of an insurance company to protect the insured pending the issuance of the policy is binding upon the insurance company, although the agreement is for a smaller amount than contemplated on the entire risk.

Westminster Woodworking Co. v. Stuyvesant Ins. Co., 25 D.L.R. 284, 9 W.W.R. 418, 32 W.L.R. 802, affirming 8 W.W.R. 187.

§ III A—48)—DELIVERY AND ACCEPTANCE OF POLICY—PAYMENT OF PREMIUMS.

The approval by the head office of a life insurance company of an application for insurance and the forwarding of a policy to the company's local agent, which, however, was never delivered to the insured, will not constitute a contract of insurance with the insured where it was a term both of the application and of the policy that the policy should not be in force until delivered, and until the official receipt for the premium had been surrendered by the company during the continued good health of the insured, although the premium had been collected by the local agent. [Calhoun v. Union Mutual Life Ins. Co., 19 N.B.R. 13; Roberts v. Security Co., [1897] 1 Q.B. 111; Equitable Fire v. Ching Wo Hong, [1907] A.C. 96, referred to.]

Donovan v. Excelsior Life Ins. Co., 22 D.L.R. 307, 43 N.B.R. 325.

[Affirmed in 26 D.L.R., 43 N.B.R. 581.]

§ III A—49)—LOAN ON POLICY—CASH SURRENDER VALUE.

The "cash surrender value" clause of a life insurance policy, providing for non-forfeiture in the event of default in payment of any premium if the cash surrender value should exceed the amount of such premium, means the cash surrender value mentioned in the table of guaranteed loan and surrender values followed in another clause in the policy; that the insurer has the right to fix the surrender value for the purposes of the policy at the end of every year; and that the surrender value fixed at the end of any one year continues to be the surrender value until increased at the end of the next year, according to the table.

Devitt v. Mutual Life Ins. Co. of Canada, 22 D.L.R. 183, 33 O.L.R. 473, 8 O.W.N. 210, reversing 33 O.L.R. 68.

C. CANCELLATION; SURRENDER; PAID-UP POLICY.

§ III C—55)—SURRENDER VALUE—INTERPRETATION OF CLAUSE.

The clause "surrender value in cash" in a life insurance policy means the amount of money or its equivalent which the insurer could afford to pay to be rid of an existing policy, and is synonymous with "cash surrender value"; and the word "available" therein further used does not mean "existing," but contemplates a condition that can be taken advantage of.

Devitt v. Mutual Life Ins. Co. of Canada, 22 D.L.R. 183, 33 O.L.R. 473, 8 O.W.N. 210, reversing 33 O.L.R. 68.

§ III C—55)—STATUTORY CONDITIONS AS TO CANCELLATION.

An insurance company seeking to utilize the power of cancellation contained in condition 19 of the Alberta Statutory Conditions, must follow the terms of that condition. (Per Idington, J.)

Nakata v. Dominion Fire Ins. Co., 52 Can. S.C.R. 294, 9 W.W.R. 1084, reversing

21 D.L.R. 26, 9 A.L.R. 47, 8 W.W.R. 343, 31 W.L.R. 126.

§ III C—56)—CANCELLATION—NOTICE OF—RETURN OF PREMIUM.

In order to validly cancel its policy of fire insurance under statutory condition No. 19, Con. Ord., N.W.T., ch. 113, the insurance company must not only send notice to the assured, but tender him the unearned premium; even if the company's sub-agent had previously been authorized by the assured to hold the money for the purpose of procuring insurance elsewhere in the event of the company cancelling, the company would not be relieved from the necessity of making the tender or at least of causing him to be notified that the portion of the premium to which he was entitled was held at his disposal.

Nakata v. Dominion Fire Ins. Co., 21 D.L.R. 26, 9 A.L.R. 47, 8 W.W.R. 343, 31 W.L.R. 136.

[Reversed in 52 Can. S.C.R. 294.]

E. WARRANTIES; REPRESENTATIONS; CONDITIONS; DESCRIPTION.

§ III E 1—75)—FALSE STATEMENT.

The language of an insurance policy must be read most strongly against the insurance company whose language it is; therefore, a stipulation in a policy of animal insurance that it shall be void if any circumstances shall not have been truly stated "by the assured" will be read as qualifying the statements contained in the application form to the effect that "any false statement annuls the policy," so that where the assured made full and true disclosure to the agent of everything about which he was asked, and signed the application form believing that the agent had correctly filled in his statement, he will not be bound by other statements which the agent had filled in fraudulently, and the company will by reason of the limitation of the condition to statements "by the assured" be prevented from setting up that the policy was void because of an untrue statement contained in the application inserted therein by the insurance agent without the assured being aware of it. [Hastings v. Shannon, 2 Can. S.C.R. 394; Biggar v. Rock Life Ass. Co., [1902] 1 K.B. 516, referred to.]

Dowdy v. General Animals Ins. Co., 21 D.L.R. 492, 33 O.L.R. 258, 8 O.W.N. 61.

§ III E 1—75)—DUTY TO DISCLOSE KNOWN FACTS.

The insured is not bound to state facts which the insurer is supposed, on account of their public character and notoriety, to know.

Lacombe v. La Protection, 48 Que. S.C. 531.

§ III E 1—80)—LIFE STOCK INSURANCE—STATUTORY CONTRACT—STATUTORY CONDITIONS—AGENT—ANSWERS IN APPLICATION FOR POLICY—INSURANCE ACT, SEC. 193—VARIATION OF CONDITIONS—"NOT

JUST AND REASONABLE"—OWNERSHIP—PROOFS OF LOSS—VALUE OF ANIMAL INSURED—DEDUCTION FROM AMOUNT INSURED.

Scharf v. General Animals Ins. Co., 8 O.W.N. 420.

(§ III E 1-92)—PROHIBITED KEEPING OF GASOLINE—DISTANCE—MATERIALITY.

Keeping a barrel of gasoline, about 16 feet from the building, is not a breach of condition in a fire insurance policy that the policy shall become void if more than 5 gallons of gasoline were "kept and stored" at one time in the building containing the insured goods; nor is it a circumstance material to the risk, non-disclosure of which would avoid the policy, where the insurance company at the time of issuing the policy had knowledge of the circumstances and the gasoline so stored is required for daily use. [Evangeline Fruit Co. v. Provincial Fire Ins. Co., 17 D.L.R. 378, 48 N.S.R. 39, reversed.]

Evangeline Fruit Co. v. Provincial Fire Ins. Co., 24 D.L.R. 577, 51 Can. S.C.R. 474.

(§ III E 1-92)—CONDITIONS AGAINST KEEPING PETROL ON PREMISES.

When a policy of insurance against fire provides that the company will not be liable for loss sustained by the insured if the latter keeps in the building covered by the risk a quantity of petrol exceeding 5 gallons, without the permission in writing of the company, the latter is not liable for loss after a fire if there is found at the time about 30 gallons of this oil in the premises insured.

Factories Ins. Co. v. Laforest, 24 Que. K.B. 543.

[An appeal was taken to the Supreme Court.]

(§ III E 1-100)—PRIOR INSURANCE—STATUTORY CONDITIONS.

The declaration made by the insured of prior insurance and its mention in the policy do not constitute a guarantee that the assured will maintain in force this first policy, and he may discontinue it without losing his rights against the second insurance company. Under R.S.Q. 1909, arts. 7034-8, a company which has already insured property is not liable for its loss by fire if subsequent assurance has been effected upon the property with another company, unless the former company has agreed thereto, or does not within two weeks from the receipt of a notice in writing of the wish of the insured to affect the subsequent insurance, refuse its consent in writing, or does not after the two weeks but before the subsequent insurance is effected refuse its consent in writing. Articles 7034-8 of R.S.Q. 1909, are deemed to form part of every insurance policy, and every derogation from these conditions is subject to the conditions of art. 7035, otherwise it is void as against the insured under art. 7036.

Siegler v. Provincial Fire Ins. Co., 47 Que. S.C. 497.

(§ III E 2-110)—UNTRUE STATEMENTS BY APPLICANT—MATERIALITY—AVOIDANCE OF POLICY.

Byrick v. Catholic Order of Foresters, 9 O.W.N. 334.

(§ III E 2-115)—REPRESENTATIONS AS TO HEALTH—CONCEALMENT.

In a contract for life insurance, the expression "sound health" contained in the policy should not be interpreted as meaning "perfect health." If an applicant for insurance states that he has already undergone an operation on the throat for a malady "of the nature of which he is ignorant," he is not thereby guilty of concealment and his declaration is sufficient. A clause in the insurance contract, stipulating that the policy would be void if the insured had been previously treated by a physician for a serious malady, will not make the contract void in such case if there has been on the part of the insured neither false representations nor fraudulent concealment.

Fernand v. Metropolitan Life Ins. Co., 47 Que. S.C. 520.

(§ III E 2-115)—LIFE INSURANCE—MISREPRESENTATION AS TO HEALTH—CONCEALMENT.

The insured, suffering from gout, which he does not declare when specially questioned, conceals a material fact of nature to diminish the appreciation of the risk; but if, after consulting his medical adviser, he has doubt about his disease, and answers: "Some rheumatism years ago," it is not fraudulent misrepresentation nor concealment; and the verdict by the jury declaring that the answers of the deceased insured were true and sincere should not be disturbed.

Security Life Ins. Co. v. Power, 24 Que. K.B. 181.

H. PREMIUMS AND ASSESSMENTS.

(§ III H-155)—PREMIUM NOTES—NON-PAYMENT OF—FORFEITURE OF POLICY.

The defense that a promissory note, made by the assured and not paid at maturity, was "given for any premium or part thereof" within the meaning of another clause in the policy, although it was in fact made in part renewal of an earlier note which was given in part payment of a premium, will bar recovery on the policy and need not be pleaded specially. [McGeachie v. North American Life Ass. Co., [1894] 23 Can. S.C.R. 148, followed.]

Devitt v. Mutual Life Ins. Co. of Canada, 22 D.L.R. 183, 33 O.L.R. 473, 8 O.W.N. 210, reversing 33 O.L.R. 68.

(§ III H-156)—LIABILITY ON PREMIUM NOTE.

When a person wishes to insure his property in a mutual insurance company at a fixed premium, and clearly states his wishes on the matter, but upon the false representations of an agent signs a note for the deposit and accepts the mutual policy without reading it, he is guilty of negligence; but there

has been no contract between the parties, and he is not bound as against the company in such a way that the latter can impose upon him payment of any portion of his note. In a contract for mutual insurance the company cannot sue for payment on a note for a deposit except for losses and expenses incurred by it after the note was signed and after the maker became a member of the company. It is for the latter in the first place to establish these facts.

Meunier v. Laprès, 47 Que. S.C. 470.

(§ III H—158)—PAYMENT TO AGENT—LIABILITY.

Where the intention of all the parties was that the insurance broker through whom policies of fire insurance were issued was that he alone should be liable to the companies for the premiums, and that he should look to the insured for the payment of the premiums, with the right on default to have cancelled the insurance companies' debit of the same to such broker, and there was payment of such premiums as between the broker and the insured, the charge of the premiums by the companies to such broker operates as an absolute payment, although the money of the insured had not actually reached the companies. [*London and Lancashire Life Ass. Co. v. Fleming*, [1897] A.C. 499, distinguished.]

Antiseptic Bedding Co. v. Gurofski, 21 D.L.R. 483, 33 O.L.R. 319, 8 O.W.N. 92.

[Referred to in *Mowat v. Goodall*, 24 D.L.R. 781.]

(§ III H—158)—ACCUMULATIONS OF INTEREST—CHARGE AGAINST AMOUNT PAYABLE AT DEATH—USURY—EQUITABLE RELIEF—KNOWLEDGE AND ACQUIESCENCE OF ASSURED.

Pennefather v. Life Assoc. of Scotland, 9 O.W.N. 331.

IV. Transfer of policy or of interest therein.

(See previous Annual Digests.)

V. Waiver, estoppel.

B. OF INSURER.

§ V B 2—185)—WAIVER OF NOTICE—ACQUIESCENCE—ASCERTAINING LOSS.

In matter of fire insurance a formal notice may be waived. Where a notice of the fire was given, but not technically in accordance with the terms of the policy and of the law, nevertheless if the company received the notice, acts upon it, makes a survey of the damage done, ascertained that the loss to the insured is a total one, it cannot refuse to pay the loss.

Carbray v. Strathcona Fire Ins. Co., 47 Que. S.C. 212.

(§ V B 3—190)—NON-PAYMENT OF PREMIUM NOTE—MISREPRESENTATION OF AGENT.

Where the insured was induced to abstain from paying the premium note by reason of the company, through its agent, saying that the life insurance policy was then void by

reason of the carrying of the balance of the former premium note into the next quarter's note, the company is estopped from setting up the non-payment of the note when it was due, or availing itself of the condition contained in the note vitiating the policy. [Ex parte *Adamson*, 8 Ch.D. 807, applied.]

Parker v. Capital Life Ass. Co., 22 D.L.R. 325, 48 N.S.R. 404.

[Affirmed in 25 D.L.R. 363, 51 Can. S.C.R. 462.]

(§ V B 5—216)—ACCEPTING PREMIUM NOTE—LAPSE OF POLICY CAUSED BY CONDUCT OF INSURER.

The acceptance of a note in payment of a premium on a life policy manifests an election on the part of the insurance company to treat the policy as in force and not to take advantage of the default of the insured; and if before maturity of the note the insured is led to believe by the representations of the company that the policy had lapsed, and in reliance of such representations he ceases to meet the subsequent premiums, the company by its conduct will be estopped from denying liability on the ground that the policy had lapsed for non-payment of premiums. [*Parker v. Capital Life*, 22 D.L.R. 325, 48 N.S.R. 404, affirmed.]

Capital Life Ass. Co. v. Parker, 25 D.L.R. 363, 51 Can. S.C.R. 462.

VI. The loss; remedies of the assured.

A. NOTICE; PROOFS; ARBITRATION.

(§ VI A—240)—PROOF OF LOSS—SCOPE OF LIABILITY.

A claim against an insurance company under a policy of fire insurance is not a debt due or accruing due until the amount of the loss is fixed; it is a claim of indemnity for loss, and until the loss is ascertained, by the admission of the company or otherwise, the claim under the policy is one of damages rather than of debt. [*Hart v. Edmonton Steam Laundry Co.*, 2 A.L.R. 130, applied.]

Shierman v. Harris and Craske, 22 D.L.R. 694, 8 S.L.R. 165, 8 W.W.R. 514.

(§ VI A—240)—REMEDIES OF ASSURED—EXCESSIVE CLAIM.

Where an excessive and exaggerated claim is made by a policyholder, and resisted by a fire insurance company, such a claim will not preclude the policyholder from recovering the real value of the goods burnt and damaged unless the claim is fraudulently made by the policyholder in the sense of endeavouring to obtain from the company money he has no right to. [*Norton v. Royal Fire & Life Ass. Co.*, 1 Times L.R. 469, referred to.]

Maple Leaf Milling Co., Ltd., v. Colonial Ass. Co., 22 D.L.R. 822, 7 W.W.R. 1124, 30 W.L.R. 567.

(§ VI A—247)—PRESUMPTION OF DEATH.

A claim for life insurance on the ground that the insured must be presumed to be dead because he had not been heard of for

seven years must be supported by all reasonably available evidence of friends of the insured who might be expected to have heard from him were he alive.

Linke v. Canadian Order of Foresters, 21 D.L.R. 741, 33 O.L.R. 159, 7 O.W.N. 795.
[See 8 O.W.N. 399.]

(§ VI A-249)—THE LOSS—SUSPICIOUS FIRE.
Laidlaw v. Hartford, 24 D.L.R. 884, 9 W.W.R. 385, 32 W.L.R. 697.

D. INTEREST IN PROCEEDS.

(§ VI D 2-375)—STATUTORY REGULATION.

Life insurance policies effected in 1850 and 1851, the insured dying in 1915, are subject to the provisions of the Insurance Act, R.S.O. 1914, ch. 183.

Re Standard Life Ass. Co. & Keefer, 24 D.L.R. 570, 34 O.L.R. 235, 427, 8 O.W.N. 559, 9 O.W.N. 56.

(§ VI D 2-380)—BENEFICIARIES—GRAND-CHILDREN—STATUTORY DESIGNATION.

Where life insurance policies had been declared by the insured to be for the benefit of his wife and children under sec. 178 (7) of the Insurance Act, R.S.O. 1914, ch. 183, the children of deceased children are entitled to share, and not merely the survivor of the original class, who would be alone entitled under sec. 171 (9).

Re Standard Life Ass. Co. & Keefer, 24 D.L.R. 570, 34 O.L.R. 235, 427, 8 O.W.N. 559, 9 O.W.N. 56.

(§ VI D 2-382)—DISAPPEARANCE OF BENEFICIARY—PRESUMPTION OF DEATH—TRUST—PAYMENT OF PROCEEDS INTO COURT FOR DISTRIBUTION.

Re Pinsonneault, 25 D.L.R. 790, 34 O.L.R. 388, 9 O.W.N. 30.

(§ VI D 2-382)—LIFE INSURANCE—DEATH OF SOLE PREFERRED DESIGNATED BENEFICIARY IN LIFETIME OF INSURED—RIGHT OF WIDOW WHERE NO CHILDREN—INSURANCE ACT, R.S.O. 1914, CH. 183, SEC. 178 (7)—OPPOSITION OF EXECUTOR OF DECEASED BENEFICIARY—COSTS.

Re Edwards, 8 O.W.N. 438.

(§ VI D 2-382)—LIFE INSURANCE—DEATH OF INSURED AND WIFE (BENEFICIARY) AND CHILD IN SAME DISASTER—EVIDENCE—PRESUMPTION OF SURVIVORSHIP—PAYMENT OF INSURANCE MONEYS TO ADMINISTRATORS OF INSURED.

Re Woodard, 8 O.W.N. 608.

(§ VI D 2-382)—LIFE INSURANCE—DESIGNATION OF BENEFICIARY—IDENTIFICATION OF POLICY—LETTER WRITTEN BY INSURED—INSURANCE ACT, R.S.O. 1914, CH. 183, SEC. 171 (3)—PAYMENT OF INSURANCE MONEY INTO COURT BY INSURANCE SOCIETY—APPLICATION FOR PAYMENT OUT TO TRUSTEE FOR DESIGNATED BENEFICIARY—PROOF OF DEATH OF INSURED—PROOF OF CIRCUMSTANCES WARRANTING ORDER FOR PAYMENT OF PRINCIPAL TO TRUSTEE.

Re Counter, 9 O.W.N. 165.

(§ VI D 2-382)—INSURANCE MONEYS WHERE PAYABLE—POLICY ISSUED IN ALBERTA WHERE ASSURED DOMICILED—CLAIM OF BENEFICIARY NAMED IN POLICY—ADVERSE CLAIM UNDER WILL OF ASSURED—EFFECT OF ALBERTA STATUTE—FORUM—PAYMENT INTO COURT.

Rudolph v. Continental Life Ins. Co., 9 O.W.N. 327.

(§ VI D 2-395)—MUNICIPAL INSURANCE—RIGHTS OF INSURED—DIVISION OF MUNICIPALITY.

A person who causes his buildings to be insured in a municipal mutual insurance company established by a by-law of a municipal council, does not lose his rights and his recourse against the company in case of fire from the fact that the municipality had been divided into two distinct municipalities. Such division does not affect the rights and obligations of the insurance company nor of its members, nor the powers and duties of the municipal council and of its officials the taxable property in the new territory erected in the municipality remaining charged with payment of all the debts and obligations contracted for before the division. It is the council of the municipality from which the new territory is detached which alone is authorized to procure from the immoveables of the two municipalities the funds necessary to pay the insurance losses.

Champigny v. Mutual Ins. Co., 48 Que. S.C. 189.

(§ VI D 2-395)—BENEVOLENT SOCIETY—MONEYS PAYABLE TO WIDOW BY RULES OF SOCIETY—PREFERRED BENEFICIARY—TRUST—INSURANCE ACT, R.S.O. 1914, CH. 183, SECS. 171 (3), 178 (2), 179 (1)—EFFECT OF WILL OF DECEASED—COSTS.

Re Clarke, 8 O.W.N. 613.

(§ VI D 2-395)—BENEFIT CERTIFICATE ISSUED BY ONTARIO SOCIETY—DESIGNATION OF PREFERRED BENEFICIARIES—CHANGE OF DOMICILE OF INSURED—ALTERATION OF DESIGNATION BY CHANGE TO BENEFICIARY OF SAME CLASS—WILL EXECUTED IN PLACE OF NEW DOMICILE—EFFECT OF LAW OF DOMICILE—TRUST—INSURANCE ACT, R.S.O. 1914, CH. 183, SECS. 178 (2), 179—EFFECT OF JUDICIAL DECISIONS—MOTION REFERRED TO APPELLATE DIVISION.

Re Baeder and C.O. of C.F., 9 O.W.N. 88.

(§ VI D 2-395)—BENEFIT CERTIFICATE—DESIGNATION OF BENEFICIARY—ALTERATION AFTER MARRIAGE—MENTAL COMPETENCY OF ASSURED—TRIAL OF ISSUE—FINDING OF FACT.

Re Brotherhood of Railway Trainmen and Moore, 8 O.W.N. 192.

E. DEFENCES; RELEASE.

(§ VI E-400)—DEFENCE OF ILLEGALITY—BANDY-HOUSE.

A fire insurance company cannot set up public morals as a defence to a claim under

its policy issued upon premises described therein as a "sporting-house," and used as a bawdy-house. [Morin v. Anglo-American, 3 A.L.R. 121, applied.]

Nakata v. Dominion Fire Ins. Co., 21 D.L.R. 26, 9 A.L.R. 47, 8 W.W.R. 343, 31 W.L.R. 136.

[Reversed in 52 Can. S.C.R. 294.]

F. SUBROGATION.

(§ VI F—405)—DEMOLITION OF BUILDING TO PREVENT FIRE—PAYMENT OF LOSS BY MUNICIPALITY.

Upon an assignment of fire insurance policies to a municipality after the latter has indemnified the owner for all damages sustained from the demolition of a building under art. 4426, R.S.Q. (1888) to arrest the progress of a fire, the municipality is entitled to be subrogated to all the rights of the owner and recover from the insurance company the loss payable under the policies.

Guardian Ass. Co. v. Town of Chicoutimi, 25 D.L.R. 322, 51 Can. S.C.R. 562.

(§ VI F—405)—LOSS CAUSED BY TRAMWAY—RE-IMBURSEMENT—PROPORTION.

A horse of the value of \$300 was insured for \$200. It was killed by a car of the Montreal Tramways Company. The insurance company paid to the owner the full amount of the policy, and sued the tramways company or the \$200. It was held that although the Court found that the owner of the horse had contributed to the accident in the proportion of one-third, the tramways company was nevertheless bound to reimburse the insurance, not only the two-thirds of the \$200 paid by it, but the two-thirds of the full value of the horse, to wit, \$200.

General Animals Ins. Co. v. Montreal Tramways Co., 48 Que. S.C. 425.

(§ VI F—405) — RIGHT AGAINST ELECTRIC COMPANY CAUSING LOSS.

An insurance company, which pays the amount of the policy after a fire caused by electric wires used to light a house, has no cause of action against the lighting company on the ground that its installation was defective when it knew or was in a position to know of the conditions of the electric system of the company.

Quebec R.L.H. & P. Co. v. Vandry, 24 Que. K.B. 214.

[Reversed by Can. Sup. Ct., March 3, 1916.]

G. APPORTIONMENT OR CONTRIBUTION.

(§ VI G—410)—FIRE INSURANCE—SEVERAL POLICIES ISSUED BY DIFFERENT COMPANIES—APPORTIONMENT OF LOSS—MISTAKE—PAYMENT ACCORDING TO APPORTIONMENT MADE—ACTION FOR BALANCE—SUMMARY DISMISSAL AS AGAINST TWO OUT OF FIVE COMPANIES—COSTS.

Adams v. Hudson Bay Ins. Co., 8 O.W.N. 435.

H. ACTIONS; ENFORCING PAYMENT.

(§ VI H—425) — CLAIMS — LIMITATION OF TIME.

Where a fire insurance company, on paying the loss of the assured alleged to have been caused by the neglect of an electric company, does not bring its action against the latter in the name of the assured, under the subrogation clause of its policy, but instead sues in its own name after taking a written assignment from the assured of his rights against the electric company, it can maintain the action only if it has given the latter notice in writing of the assignment under the Laws Declaratory Act, R.S.B.C., ch. 133; and the defect is not cured by an order adding the assured as a co-plaintiff made without prejudice to defendants' rights after the period of limitation had expired within which the added party would have had to sue. [B.C. Electric v. Crompton, 43 Can. S.C.R. 1; Simpson v. Thompson, 3 A.C. 279, referred to.]

Union Ass. Co. v. B.C. Electric R. Co., 21 D.L.R. 62, 21 B.C.R. 71, 8 W.W.R. 327, 30 W.L.R. 717.

(§ VI H—425)—REFUSAL TO FURNISH CLAIM PAPERS—INSURED UNHEARD FOR SEVEN YEARS—PRESUMPTIONS.

A condition in a life insurance policy that formal proofs of death shall be furnished by the beneficiary is waived by the written refusal of the insurer to furnish claim papers until the Court should decide that the insured should be presumed to be dead because he had not been heard of for seven years.

Linke v. Canadian Order of Foresters, 21 D.L.R. 741, 33 O.L.R. 159, 7 O.W.N. 795. [See 8 O.W.N. 399.]

VII. Reinsurance.

(See previous Annual Digests.)

VIII. Guaranty policies.

(§ VIII—436)—EMPLOYER'S LIABILITY—CONTRACTOR'S AND CITY EMPLOYEES—EXTRA PREMIUMS.

A stipulation in an employers' liability policy issued to a municipality that it shall not cover loss from liability for injuries or death caused to a person unless his compensation is included in the scheduled estimate on which the insurance was based, will exclude liability by the insurance company in respect of employees of the city completing works which had been let to contractors at the time the policy was taken out, but which afterwards were taken over by the city on the contractor's default; consequently no action lies against the city for an excess premium on the basis of the additional wages on such work not contemplated in the insurance contract paid to city workmen completing the contract work as to whom no claim was made nor could be substantiated on the city's behalf.

Ocean Accident & Guarantee Corp. v. Moose Jaw, 21 D.L.R. 16.

(§ VIII—436)—EMPLOYER'S LIABILITY—INTERPRETATION OF POLICY—MEDICAL ATTENDANCE.

A clause in a policy of insurance against accidents to workmen, issued in favour of an employer, and providing that the insured shall not incur any expense nor make any settlement with an employee, except that at the time of the accident the insured may provide for imperative medical assistance, should be interpreted as putting the cost of medical assistance upon the insurance company which should guarantee the insured against it.

Dupont v. Dupont, 47 Que. S.C. 50.

INTENT.

As to malice, see Assault and Battery; Libel and Slander; False Imprisonment; Malicious Prosecution.

Construing contract according to, see Contracts.

As element of crime generally, see Criminal Law.

Parol evidence as to, see Evidence, VI.

As element of homicide, see Homicide.

As question for jury, see Trial.

Of testator, see Wills.

INTEREST.

I. WHEN RECOVERABLE.

- A. In general, on contracts.
- B. On debts, loans and advances.
- C. As damages; on amount recovered as damages.
- D. On judgments; verdicts; awards.
- E. On legacies and annuities; claims of distributees.
- F. Liability of officer, receiver, trustee or personal representative.
- G. Liability of province, county or municipality.
- H. Necessity and effect of demand.

II. COMPUTATIONS; AMOUNT; RATE; FREQUENCY OF PAYMENT.

- A. In general.
- B. Rate.

III. COMPOUND INTEREST.

Default in payment of interest on mortgage, see Mortgage.

Usurious interest, see Usury.

As part of damages, see Damages.

I. When recoverable.

A. IN GENERAL; ON CONTRACTS.

(§ I A—1)—WHEN RECOVERABLE IN GENERAL.

In all cases where, in the opinion of the Court, the payment of a just debt has been improperly withheld, and it seems to be fair and equitable that the party in default should make compensation by payment of interest, it is incumbent upon the Court to allow interest for such time and such rate as the Court may think right. [Toronto R. Co. v. Toronto, [1906] A.C. 117, applied.]

Last West Lumber Co. v. Haddad, 25

D.L.R. 529, 8 S.L.R. 407, 9 W.W.R. 578, 33 W.L.R. 15.

B. ON DEBTS; LOANS AND ADVANCES.

(§ I B—20)—ON PRICE OF GOODS—IMPLIED AGREEMENT TO PAY.

In the absence of some special usage of trade, or of some stipulation express or implied, a trader is not entitled to interest on the price of goods sold and delivered. An agreement to pay interest may be reasonably inferred from the previous dealings of the parties coupled with a printed notification of intention to charge interest on the vendors' statement of account. [Re Anglesey, 70 L.J. Ch. 810, followed.]

Marshall-Wells Co. Ltd. v. Eaton, 8 W.W.R. 787.

(§ I B—22)—ON ACCOUNTS.

Under secs. 36 and 37 (2), R.S.S. ch. 52, interest upon a stated account may be allowed from the time when a demand for payment thereof is made.

Last West Lumber Co. v. Haddad, 25 D.L.R. 529, 8 S.L.R. 407, 9 W.W.R. 578, 33 W.L.R. 15.

C. AS DAMAGES; ON AMOUNT RECOVERED AS DAMAGES.

(§ I C—25)—AGREEMENT OF SALE OF LAND.

In fixing the amount to be paid by the purchaser for a conveyance in a vendor's action to enforce an agreement of sale on the purchaser's default in payment, interest after default should be allowed under the Judicature Ordinance, Alta., sec. 10, clause 15, unless there is in the facts some equitable ground for withholding it in cases where the contract does not expressly provide for interest post diem; for although the word "may" is used in that enactment in declaring the power on the Court to award interest on money "improperly withheld" if it seems to the Court fair and equitable to allow it, it becomes the duty of the Court to award interest when of that opinion and to fix the rate. [Toronto R. Co. v. Toronto, [1906] A.C. 117, considered.]

Walker v. Card, 23 D.L.R. 349, 7 W.W.R. 1145, 30 W.L.R. 402.

(§ I C—25)—ACCOUNT—INTEREST BY WAY OF DAMAGES.

On appeal from a judgment allowing interest on an amount found due the plaintiff on an account taken between the parties for money paid by the plaintiff for the defendant, and for work done and materials supplied by the plaintiff for the defendant in the erection of a house owned in common by the plaintiff and defendant:—Held, that interest may be allowed when authorized by statute or when payable by contract, and such contract may be inferred from trade or mercantile usage, or from a course of dealing between the parties; but (varying the judgment of Barry, J., appealed from), it cannot be allowed by way of damages merely because of long delay under vexatious and op-

pressive circumstances, or because the money has been used and interest earned thereon (except in the case of trust moneys), nor because the debt has been wrongfully withheld by the plaintiff after the defendant has endeavored to obtain it. [Raymond v. Hay, 3 N.B.R. 99, considered and distinguished.]

Duffy v. Duffy, 43 N.B.R. 555.

(§ I C—33)—EXPROPRIATION AWARD—TIME OF ENTRY.

The effect of sec. 347 of the Municipal Act, R.S.O. 1914, ch. 192, incorporated in the Public Parks Act, R.S.O. 1914, ch. 203, by sec. 17 of that Act, is, that where the arbitration is only as to the amount of compensation, and the expropriating by-law does not authorize permanent entry on the land, the award as to amount does not become binding on the Parks Board unless adopted by by-law within three months after the making of the award; and where possession of the land has not been taken by the Board, and no provision is made in the by-law for entry upon the land under the award, interest should not be allowed to the claimant land-owner upon the sum awarded for the value of the land. [Re Macpherson and City of Toronto, 26 O.R. 558, distinguished.]

Re Hislop & Stratford Park Board, 23 D.L.R. 753, 34 O.L.R. 97, 8 O.W.N. 425.

D. ON JUDGMENTS, VERDICTS, AWARDS.

(§ I D—35)—JUDGMENT FOR DAMAGES FOR TRESPASS TO MINING CLAIM—APPEAL FROM —PAYABLE FROM DATE OF JUDGMENT.

[Deisler v. Spruce Creek Power Co., 17 D.L.R. 506, referred to.]

Deisler v. Spruce Creek Power Co., 25 D.L.R. 763, 9 W.W.R. 548.

(§ I D—36) — EXPROPRIATION PROCEEDINGS —ABANDONMENT.

There can be no allowance of interest under sub-sec. 4 of sec. 23 of the Expropriation Act, R.S.C. 1906, ch. 143, either upon the estimated value of the lands or upon the amount tendered therefor by the Government, where before the ascertainment of the indemnity the proceedings were abandoned and no special damages sustained.

Quebec, Jacques-Cartier Electric Co. v. The King, 24 D.L.R. 424, 51 Can. S.C.R. 594.

(§ I D—36)—EXPROPRIATION AWARDS—COMPUTATION OF AMOUNT.

Section 7, ch. 56, of the False Creek Reclamation Act, 1911, vests the right to take possession of expropriated lands immediately upon the payment or legal tender of the amount awarded; hence, interest on the amount awarded for land taken thereunder runs from the date of the award, and not from the date of notice fixed by the arbitrator. [Re False Creek Reclamation Act, 22 D.L.R. 103, affirmed.]

Re False Creek Reclamation Act, 22 D.L.R. 117, 8 W.W.R. 1191, 31 W.L.R. 678, 113 L.T. 795.

H. NECESSITY AND EFFECT OF DEMAND.

(§ I H—55) — SUFFICIENCY OF DEMAND — PRINTED WORDS ON BILL.

Printed words on an account, "Interest at 10% per annum chargeable after 30 days," together with verbal references to these words and notification that interest is being charged, constitute a demand in writing sufficient to support a claim for interest from the expiry of the thirty days.

Hart v. Greer (No. 1), 9 W.W.R. 709, 33 W.L.R. 39.

II. Computation; amount; rate; frequency of payment.

A. IN GENERAL.

(§ II A—60)—ANNUAL PAYMENT—"PER ANNUM"—MEANING OF.

The words "at 6% per annum," as applied to a payment of interest, simply indicate the method of computation and the rate allowable by way of interest, but do not imply a contract to pay yearly or each year, merely signifying that the interest becomes payable at the time of the maturity of the principal obligation. [Atherstone v. Bosstock, 2 Man. & G. 511, 719, applied.]

Finkbeiner v. Yeo, 25 D.L.R. 673, 9 W.W.R. 891.

III. Compound interest.

(See previous Annual Digests.)

INTERIM INJUNCTION.

See Injunction, II.

INTERLOCUTORY ORDERS.

As to appeal, see Appeal.

Generally, see Motions and Orders; Injunction.

INTERNAL REVENUE.

See Duties; Taxes.

INTERNATIONAL LAW.

Foreign judgments, see Judgments.

Conflict of laws between provinces, see Conflict of Laws.

Status of aliens, see Aliens.

Annotation.

Status of aliens during war: 23 D.L.R. 375.

INTERPLEADER.

Priority rights generally, see Execution; Levy and Seizure; Attachment; Garnishment.

As to priorities between parties to chattel mortgage, see Chattel Mortgage; Bills of Sale.

As between creditors and assigns of debtors, see Fraudulent Conveyances; Insolvency; Assignments for Creditors.

(§ I—10)—CROP OF GRAIN—SEED OF EXECUTION DEBTOR—LAND BELONGING TO CLAIMANT.

Lachance v. Price, 22 D.L.R. 918, 32 W.L.R. 60.

(§ I—30)—EXECUTION CREDITORS—FRAUD—TRANSACTIONS BETWEEN HUSBAND AND WIFE.

Held, in interpleader proceedings, that a transfer from a husband to a wife was fraudulent. Fraud may be charged in an interpleader issue. *West v. Ames-Holden*, 3 Terr. L.R. 17; followed; *Donohoe v. Hull*, 24 Can. S.C.R. 683, distinguished, as not being applicable to cases where, as in an interpleader issue, the question is whether or not a sale or transfer of the goods is a mere sham or device to defeat execution creditors.

Jno. Deere Plow Co. v. Knudston, 9 W.W.R. 574.

INTERPRETATION.

Of contracts, see Contracts; Insurance; Wills; Deeds.

Of statutes, see Statutes.

INTERROGATORIES.

To witness, see Witnesses; Depositions; Discovery and Inspection.

INTERVENTION.

Parties intervening, see Parties, III.

INTESTACY.

See Descent and Distribution; Wills; Executors and Administrators.

INTOXICATING LIQUORS.

I. PROHIBITION AND REGULATION; STATUTES, BY-LAWS AND ORDINANCES.

- A. In general.
- B. Conditions of business.
- C. Local option.

II. LICENSES.

- A. In general.
- B. Discretion as to granting.
- C. Contest; remonstrance; renewal.
- D. Cancellation; revocation; forfeiture.

III. UNLAWFUL SALES; OFFENCES AND PROCEEDINGS.

- A. In general.
- B. Sales by clubs and their agents.
- C. Sales by agent, clerk or partner.
- D. By druggists.
- E. To prohibited persons.
- F. Prohibited hours and days.
- G. Place of sale.
- H. Seizure and destruction.
- I. Trial of offenders.
- J. Second and subsequent offences.

IV. CIVIL REMEDIES.

- A. In general; nuisances.
- B. Civil damages.

Summary conviction for selling, see Summary Conviction. Review of proceedings, see Appeal; Certiorari.

I. Prohibition and regulation; statutes, by-laws and ordinances.

C. LOCAL OPTION.

(§ I C—30)—VALIDITY OF BY-LAWS—POWER OF COURT TO QUASH.

The power of the Court as to quashing local option by-laws is, since the addition in 1908 by Act 8 Edw. VII. ch. 54, sec. 11 of sec. 143a to the Liquor License Act, R.S.O. 1897, ch. 245 (R.S.O. 1914, ch. 215), practically vested in the executive of the province; and while the Court is still bound to decide according to law and may yet quash a by-law, the effect of its decision is dependent upon the assent of the Minister.

Re Sharp & Village of Holland Landing, 24 D.L.R. 160, 34 O.L.R. 186, 8 O.W.N. 507.

(§ I C—33)—QUALIFICATIONS OF VOTERS—RESIDENCE.

A voter whose house is in the municipality, but part of the house being rented and part containing his furniture, must be regarded as a resident in the municipality, and he will not be disqualified from voting at a local option election. [*Re Schumacher*, etc., 21 O.L.R. 522; *Re Ellis*, etc., 21 O.L.R. 74, 23 O.L.R. 427, referred to.]

Re Sharp & Village of Holland Landing, 24 D.L.R. 160, 34 O.L.R. 186, 8 O.W.N. 507.

(§ I C—33)—VALIDITY OF ELECTION—VOTERS' LIST—PARLIAMENTARY IRREGULARITIES.

A local option by-law will not be quashed because the voters' list used was not that required by the statute, but which had no effect upon the result of the vote, or for omitting the description of a voter on the list, or for trivial parliamentary irregularities at the municipal council. [*Re Ryan*, etc., 21 O.L.R. 582, 22 O.L.R. 200; *Re Sinclair*, etc., 13 O.L.R. 447, applied.]

Re Sharp & Village of Holland Landing, 24 D.L.R. 160, 34 O.L.R. 186, 8 O.W.N. 507.

(§ I C—33)—TEMPERANCE ELECTION—VALIDITY—JURISDICTION TO DETERMINE.

The Supreme Court of Ontario has no jurisdiction to determine the validity of an election held under the Canada Temperance Act, R.S.C. 1906, ch. 152, respecting the regulation of traffic in intoxicating liquors, the scrutiny of which is by secs. 67 (c), 69 and 70 conferred in Ontario, on the Judge of the County Court, whose decision is declared final. [*Chapman v. Rand*, 11 Can. S.C.R. 312; *McPherson v. Mehrling*, 47 Can. S.C.R. 451, referred to.]

Murdock v. Kilgour, 22 D.L.R. 752, 32 O.L.R. 412, 8 O.W.N. 144.

(§ I C—33)—PROHIBITION BY-LAW—NOTICE—SUFFICIENCY—INJUNCTION.

The notice calling the municipal electors to a public meeting for the purpose of approving or disapproving by their votes of prohibition by-law should only state the day, place and hour for the meeting; but the fact of adding to it that the voting would continue one day for each 400 voters, has not the effect of fixing the duration of the

voting—which is fixed by the Act—nor to annul the notice, and an injunction will not be issued on account of it prohibiting the holding of the poll.

Gastonguay v. Town of Levis, 48 Que. S.C. 264.

(§ I C—33)—SUFFICIENCY OF PETITION—ASCERTAINING NUMBER OF QUALIFIED VOTERS.

Section 137 (4) of the Liquor License Act, R.S.O. 1914, ch. 215, provides for the submission by the council to the municipal electors of a local option by-law or (see subsec. (8)) a repealing by-law, if a petition "signed by at least 25% of the total number of persons appearing by the last revised voters' list of the municipality to be qualified to vote at municipal elections" is filed with the Clerk:—Held, that in order to ascertain whether a petition duly filed is sufficiently signed, the number of persons who appear by the voters' list to be qualified to vote is to be taken into consideration; if one-fourth of these persons have signed the petition, the statutory requirement is answered. The name of a person may be repeated once or oftener on the list, but that does not increase the number of persons. The unimpeached affidavit of the applicant, upon a motion for a mandamus to the council to submit a repealing by-law, that the number of persons on the voters' list was only 3,625, while there were in name 4,337, was accepted; and a mandamus was granted. That the applicant was an officer or servant (auditor) of the municipal corporation was considered unobjectionable.

Re Owen Sound Local Option By-law, 35 O.L.R. 48, 9 O.W.N. 268.

(§ I C—33)—LOCAL OPTION BY-LAW—MOTION TO QUASH—IRREGULARITY OF SERVICE—FAILURE TO FILE AFFIDAVIT IN TIME.

Re Arthur and Town of Meaford, 24 D.L.R. 878, 34 O.L.R. 231, 8 O.W.N. 557.

(§ I C—33)—LOCAL OPTION BY-LAW—SUBMISSION TO ELECTORS—SUFFICIENCY OF NUMBER OF PETITIONERS—ASCERTAINMENT—MANDAMUS—COSTS.

Re Stratford Local Option By-law, 25 D.L.R. 774, 35 O.L.R. 26, 9 O.W.N. 225.

(§ I C—33)—LOCAL OPTION BY-LAW—VOTING ON—INSPECTION AND PRESERVATION OF BALLOTS—APPLICANT FOR ORDER—STATUS—MUNICIPAL ACT, R.S.O. 1914, CH. 192, SECS. 146, 147, 279.

Re Jarvis Local Option By-law, 7 O.W.N. 751.

II. Licenses.

A. IN GENERAL.

(§ II A—35)—INTOXICANTS—BEER CONTAINING 2.02% OF ALCOHOL HELD TO BE INTOXICATING.

Rex v. Willis, 9 W.W.R. 919, 25 Can. Cr. Cas.

(§ II A—35) — ASSIGNABILITY — ABANDONMENT OF LICENSE IN FAVOUR OF ANOTHER. The license for the sale of intoxicating

liquors granted by the collector of revenues is not a commercial matter. It is only a permission and a privilege granted by the State, the issue and delivery of which are subject to the approbation of the license commissioners. In consequence, the holder of such license can neither sell nor transfer, nor absolutely guarantee its confirmation. Nevertheless, the holder can, for good consideration, abandon his license and its renewal in favour of an assignee, who assumes the risk of the approbation or refusal to confirm by the commissioners, but it should be done in express terms.

Henry v. Beaulieu, 47 Que. S.C. 458.

(§ II A—37)—REDUCTION OF LICENSES—VALIDITY OF PETITION.

Where a petition for liquor license reduction under the Liquor License Act, R.S.O. 1914, ch. 215, sec. 16, was not in fact duly signed and the municipal council knew that it was not, and acted in defiance of the statutory provision or without appreciating the fact that the power of the council itself to initiate a reduction by-law which once existed had been taken from it, the by-law based on such petition must be quashed. [*Re Williams and Brampton*, 17 O.L.R. 398, referred to.]

Re Grieg & City of London, 22 D.L.R. 595, 8 O.W.N. 177.

B. DISCRETION AS TO GRANTING.

(§ II B—40)—CONFIRMATION OF CERTIFICATE—OPPOSITION.

The confirmation of a license is left by the Act entirely to the discretion of the municipal council to which it is presented. When the majority of the municipal electors of an electoral district oppose the confirmation of a certificate of a license of sale for intoxicating liquors, they should prove to the municipal council that their opposition contains the signatures of such majority, and see that all the formalities required by the Act are observed; if they do not, the council may, in its discretion, disregard them and confirm the certificate.

Pilon v. City of Lachine, 47 Que. S.C. 193.

C. CONTEST; REMONSTRANCE; RENEWAL.

(§ II B—40)—RENEWAL OF LICENSE—DISCRETION.

When a municipal council has adopted a by-law limiting the number of licenses, and refuses to confirm a certificate for the renewal of a license for the sale of liquor, without giving its reasons for its refusal, the municipality is not liable for the damages suffered by the petitioner although the license granted under such circumstances to another person is void.

Latour v. City of Montreal, 48 Que. S.C. 61.

III. Unlawful sales; offences and proceedings.

A. IN GENERAL.

(§ III A—55)—SALE WITHOUT LICENSE—Lo-

CAL OPTION DISTRICT—AMENDING CONVICTION.

Under the Liquor License Act, Man., the onus of proving a license to sell is placed upon the accused (sec. 203), and where such onus is not rebutted, a conviction for unlawfully selling without license is justified under sec. 159 on the finding of more liquor than the accused would reasonably require upon his premises if he fails to rebut the statutory presumption of selling which arises thereupon; and the Court may make the necessary amendments to a conviction purporting to be for selling in a local option district so as to make it merely a conviction for selling without a license without entering into a consideration of the validity of the local option by-law, the provision for sale without license being equally applicable whether or no there was a valid local option by-law.

Rex v. Palmer, 22 D.L.R. 300, 24 Can. Cr. Cas. 20, 25 Man. L.R. 359.

(§ III A—55) — STATUTORY PRESUMPTION FROM FINDING LIQUOR IN QUANTITY.

A statutory presumption of illegal sale of liquor is raised under sec. 204 of the Liquor License Act, Man., against the person on whose premises is found more intoxicating liquor than is reasonably required for the use of a person not licensed to sell; and by virtue of sec. 215 such presumption will support a conviction for illegal sale without license as being an offence under the same statute, although the information was only for unlawful possession of liquors in a local option district and did not allege a sale by the accused. [See R. v. Publicover, 21 D.L.R. 203, 24 Can. Cr. Cas. 1, and Annotation to same.]

Rex v. Palmer, 22 D.L.R. 300, 24 Can. Cr. Cas. 20, 25 Man. L.R. 359.

(§ III A—55)—SEVERAL OFFENCES ON SAME DAY.

Each separate sale of intoxicating liquor in contravention of the Canada Temperance Act, R.S.C. 1906, ch. 152, constitutes a distinct offence even if committed on the same day.

Ex parte Richard; Rex v. Steeves, 24 Can. Cr. Cas. 183, 42 N.B.R. 596.

(§ III A—55)—LIQUOR LICENSE ACT—MAGISTRATE'S CONVICTION FOR KEEPING INTOXICATING LIQUOR FOR SALE WITHOUT LICENSE—EVIDENCE—SEARCH WARRANT—PRIOR CONVICTION—IDENTITY OF ACCUSED.

Rex v. Colton, 9 O.W.N. 233.

(§ III A—56)—"SPIRITUOUS OR MALT LIQUORS."

In a prosecution under Ontario Liquor License Act for illegally keeping liquor for sale, and proof in support thereof that lager beer was sold by the defendant and not merely purchased by him as the agent of those who consumed it, the magistrate is to take judicial notice that beer is both a

spirituous and a malt liquor, and consequently included in the definition of "liquor" given by the Liquor License Act; and it was unnecessary to take evidence as to whether or not it contained more than two and a half per cent. of proof spirits.

Rex v. Scaynetti, 24 Can. Cr. Cas. 40, 34 O.L.R. 373, 9 O.W.N. 13.

(§ III A—56)—PROOF THAT INTOXICATING.

The Sales of Liquor Act (Sask.) specifically declares by sec. 2, sub-sec. 1, that every spirituous and every fermented and every malt liquor is within the prohibition of the Sales of Liquor Act, and it is therefore unnecessary as to such spirituous, fermented or malted liquors to prove that they are intoxicating or that they contain more than one per cent. of alcohol and should therefore be conclusively deemed to be intoxicating under that sub-section. [R. v. Marsh, 39 N.B.R. 119; R. v. Scaynetti, 25 Can. Cr. Cas. 40, referred to.]

Rex v. McPherson, McPherson v. Morrison (No. 2), 25 Can. Cr. Cas. 62, 8 S.L.R. 412, 9 W.W.R. 613, 33 W.L.R. 21.

(§ III A—56)—CERTIORARI—JUDICIAL NOTICE THAT WHISKEY INTOXICATING.

In considering an appeal by way of certiorari from a magisterial conviction (made under sec. 91 of ch. 39, 1915, the Sales of Liquor Act), the question for the Judge is: "Is there any evidence whatever to warrant the conviction?" Judicial notice taken of the fact that Scotch whiskey is an intoxicating liquor.

McPherson v. Morrison, 9 W.W.R. 164, 32 W.L.R. 385, 25 Can. Cr. Cas.

(§ III A—56)—SALE BY LICENSEE IN PROHIBITED QUANTITY.

An information under the Liquor License Act (Man.) charging a wholesale licensee with selling bottled whiskey in a quantity less than one reputed quart bottle discloses at least an offence under sec. 17 of that Act punishable under the general penalty imposed by sec. 178, if it is not within the penalty of sec. 159 for illegal sales without the required license; consequently, prohibition will not lie in respect of summary proceedings upon such information where the case has been remanded from time to time and the magistrate has not yet concluded the hearing.

White v. T. D. Cavanagh, Ltd., 25 Can. Cr. Cas. 38, 32 W.L.R. 432, 9 W.W.R. 132, 25 Man. L.R. 624.

(§ III A—57)—OBTAINING FROM CARRIER—PROHIBITED DISTRICT.

It is not an offence under the Nova Scotia Temperance Act (1910), as amended 1911, for the purchaser of liquor bought in a county under license to personally receive it from the express company on its arrival by railway at the town in which he resides where the prohibition clauses of that Act are in effect; sec. 30 of the Act, which prohibits sending liquor or bringing or causing it to be sent or brought applies to the person

or agent sending the liquor by a common carrier to the person in the municipality which is not under license and to the person carrying liquor for another at either end of the transit, but not to the purchaser personally taking delivery from the carrier as the consignee of liquor bought in a licensed district.

Rex v. Publicover, 21 D.L.R. 203, 24 Can. Cr. Cas. 1, 49 N.S.R. 85.

[See Rex v. Palmer, 22 D.L.R. 300.]

(§ III A-59)—CONTRIBUTION BY SEVERAL TO BUY LIQUORS—LIABILITY OF OCCUPANT WHERE LIQUORS CONSUMED.

On a charge under the Liquor License Ordinance, Alta., of selling intoxicating liquor without a license, the effect of sec. 115, sub-sec. 3, of the ordinance is that proof of consumption of the liquor on the premises of the accused by a group of people gathered together merely for the purpose of drinking, is made conclusive evidence of selling and testimony that the persons so assembled had each contributed to the cost of the liquor and sent for same by messenger is not admissible to displace the statutory presumption. [R. v. Lightburne, 4 Can. Cr. Cas. 358, followed; and see R. v. Cahoon, 17 Can. Cr. Cas. 65.]

Rex v. Simuluk, 24 Can. Cr. Cas. 136, 31 W.L.R. 577.

(§ III A-59)—LIABILITY OF OCCUPANTS—EFFECT OF CONVICTION.

The disqualification of a member of a municipal council under the Liquor License Act, C.S.N.B. 1903, ch. 22, sec. 61, on his conviction for knowingly committing any offence against the Act, does not apply where the conviction was not expressed to be for an offence "knowingly" committed, and might have been for the illegal sale of liquor by another without his knowledge on premises of which he was the occupant and as to which he might on that account be liable to conviction under the Act apart from any guilty knowledge on his part; the Court hearing a motion to quash the council's resolution on the ground that it was passed on the invalid vote of the convicted member is under no duty to examine the proceedings before the magistrate to ascertain therefrom whether or not the offence was knowingly committed, the duty of finding upon that question being one primarily for the magistrate. [Ex parte O'Shaughnessy, 8 Can. Cr. Cas. 136, cited, and see R. v. Graf, 15 Can. Cr. Cas. 290; Sherras v. De Rutzen, [1895] 1 Q.B. 918, referred to.]

Ex parte Murchie; Rex v. Gloucester, 24 Can. Cr. Cas. 228.

(§ III A-59)—LIABILITY OF OCCUPANT—PRESUMPTION ON FINDING LIQUORS UNDER SEARCH WARRANT.

Sub-section 49 of sec. 49 of the Nova Scotia Temperance Act, as amended by N.S. Acts 1911, ch. 33, sec. 14, is within the legislative powers of a provincial Legislature in making the finding of intoxicating liquor

under a search warrant prima facie evidence of keeping for sale in contravention of the Act, although sales to persons outside of the province are not within the prohibition of the N.S. Temperance Act, and this statutory presumption will apply without any allegation or proof on the part of the prosecution that the keeping for sale was not for the purpose of selling solely to persons outside the province.

Rex v. Hoare, 24 Can. Cr. Cas. 279, 49 N.S.R. 119.

B. SALES BY CLUBS AND THEIR AGENTS.

(§ III B-60)—STATUTORY PRESUMPTION.

A boat moored on a river is a "place" or "premises" within sec. 45 of the Liquor License Act, R.S.O. 1914, ch. 215, so as to bring into operation the statutory presumption of keeping liquor for sale where the boat is controlled by a club and it is proved that liquor is consumed there.

Rex v. Himmelsbach, 24 Can. Cr. Cas. 381, 9 O.W.N. 38.

F. PROHIBITED HOURS AND DAYS.

(§ III F-82)—ELECTION DAY.

It is not illegal, under the Quebec License Law, sec. 974, for a person who is not a licensee and who is not required to obtain a license under that statute, to give away intoxicating liquor to his friends by treating them on the day of a municipal election being held in the municipality; the limitation of the section as to beer and wines used at meals indicates that the words "by any person" used in the second paragraph of sec. 974 refer only to licensees.

Collector of Revenue v. Plourde, 24 Can. Cr. Cas. 48.

(§ III F-83)—SALE DURING PROHIBITED HOURS—SUFFICIENCY OF CONVICTION.

In a prosecution for selling intoxicating liquor contrary to the provisions of sec. 48 (1) of the Liquor License Act, which prohibits the sale by license holders during certain hours, proof that the accused kept an hotel and sold liquors is, in the absence of any proof to the contrary, evidence that the accused was a licensed holder, and a conviction based on such evidence will not be quashed on certiorari.

The King v. Dugas; Ex parte McLeary, 43 N.B.R. 65.

G. PLACE OF SALE.

(§ III G-85)—DEFECT IN INFORMATION.

A charge under the Canada Temperance Act that the accused on a specified date "unlawfully did sell intoxicating liquor contrary to Part II. of the Canada Temperance Act then in force in the said county of Sunbury" does not imply that the illegal sale took place in that county, as Part II. is in force in many different counties; nor will the facts that the summons stated an offence at a particular place in that county within the jurisdiction of the commissioner trying

the charge, and that the evidence adduced proved such offence, cure the defect and give the commissioner jurisdiction where the defendant did not appear to answer the charge, but his counsel appeared to object to the jurisdiction and withdrew on the objection being overruled by the commissioner.

Ex parte Monahan; *Rex v. Hubbard*, 24 Can. Cr. Cas. 127, 42 N.B.R. 524.

(§ III G—85)—KEEPING FOR SALE.

The amendment of 1915 to the Quebec License Law, sec. 1011, by which in lieu of the fine of \$50 for unlawfully keeping liquors for sale, the fine is made discretionary with the Judge, with a maximum of \$200, does not apply to a prosecution which was pending when the amendment was passed; such case is governed by the prior law when the amendment is not expressly made retroactive, and the Court has no discretion to reduce the fixed fine of \$50 which it declares.

Collector of Revenue v. Boisvert, 24 Can. Cr. Cas. 138.

(§ III G—86)—WHAT IS PLACE OF SALE—ACCEPTANCE OF ORDER FOR DELIVERY ELSEWHERE.

A brewer holding a brewer's provincial license may not sell even in wholesale quantities at the brewery to a person who is not a holder of a liquor license if a local option by-law is in force in the municipality in which the brewery is situated, and the transaction is none the less a "sale" in such municipality in contravention of the statute [Liquor License Act, R.S.O. 1914, ch. 215, sec. 155], although the order was given and accepted at the brewery for delivery in another municipality in which also local option was in force and although there was no appropriation of the goods at the time; the word "sell" in sec. 155 is not to be construed as limited to the strict technical sense so as to demand an allocation of the goods. [Lambert v. Rowe, [1914] 1 K.B. 38, applied; *Pletts v. Campbell*, [1895] 2 Q.B. 229, distinguished; see also *R. v. Clarke*, 20 Can. Cr. Cas. 486.]

Rex v. Wright, 24 Can. Cr. Cas. 321, 33 O.L.R. 237, 8 O.W.N. 56.

(§ III G—89)—UNLAWFUL KEEPING—LABELS AS EVIDENCE.

On a conviction for unlawful possession of intoxicating liquor being brought up for review on certiorari, the bottles put in as exhibits at the trial should be transmitted for the certiorari hearing, if the labels on the bottles are relied upon as a representation of their contents by the accused.

Rex v. Dickey, 25 Can. Cr. Cas. 55, 9 W.W.R. 142, 32 W.L.R. 404.

(§ III G—89)—SEPARATE CONVICTIONS FOR SELLING AND KEEPING FOR SALE.

The offences of illegally selling intoxicating liquor and of keeping intoxicating liquor for sale are distinct offences, and separate proceedings for each are maintainable under the Liquor License Act, R.S.O. 1914, ch. 215, although charged as of the same day.

Rex v. Sinkolo, 24 Can. Cr. Cas. 293, 8 O.W.N. 515.

H. SEIZURE AND DESTRUCTION.

(§ III H—90)—WHEN JUSTIFIED.

Where there is no reason to suspect that intoxicating liquor consigned by rail from a licensed district to an unlicensed district in Nova Scotia is intended for sale or to be used otherwise than for the personal use of the consignee, the seizure of the liquor is not justified under sec. 36, N.S. Acts, 1911, ch. 33, and the magistrate should order it restored to the consignee.

Rex v. Publicover, 21 D.L.R. 203, 24 Can. Cr. Cas. 1, 49 N.S.R. 85.

[See *Rex v. Palmer*, 22 D.L.R. 300.]

(§ III H—90)—SEIZURE UNDER SEARCH WARRANT—PRESUMPTION.

The statutory presumption of keeping liquor for sale raised against the occupant of premises where liquor is found by officers executing a search warrant under the Nova Scotia Temperance Act has reference not merely to the arrest of the occupant in that event, which sec. 46 authorizes, but applies also against such occupant on being charged with unlawfully keeping the liquor for sale.

Rex v. Hoare, 24 Can. Cr. Cas. 279, 49 N.S.R. 119.

I. TRIAL OF OFFENDERS.

(§ III I—91)—MINUTE OF CONVICTION—SUFFICIENCY—AMENDMENT.

In a prosecution for selling intoxicating liquor contrary to the Liquor License Act, the minute of conviction imposed a penalty and costs without specifying the amount of the costs or the costs of commitment, and conveying to gaol on default of payment. The conviction was in the proper form, imposed the penalty, fixed the amount of the costs, and awarded imprisonment in default of payment of the said sums and the costs of commitment and conveying to gaol:—Held, per curiam, on a motion to quash the conviction on certiorari, that apart from the provisions of sec. 89, the minute was sufficient to support the conviction; but, assuming that it was defective, it is not a ground under sec. 89 for quashing the conviction. Held, per Grimmer, J., that if it were necessary to support the conviction the minute could be amended under sec. 89 (2).

The King v. Dugas; Ex parte Paulin, 43 N.B.R. 58.

J. SECOND AND SUBSEQUENT OFFENCES.

(§ III J—94)—PLEA OF GUILTY BY COUNSEL.

As the provisions of the Criminal Code, Part XV. (Summary Convictions), are in terms applicable to prosecutions under the Nova Scotia Temperance Act, 1910, counsel may appear before the magistrate and plead guilty for the accused without the personal attendance of the latter in respect of an illegal sale of intoxicating liquor in contra-

vention of the Act. [Rex v. Montgomery, 102 L.T.R. 325, and Rex v. Thompson, [1909] 2 K.B. 614, 100 L.T.R. 970, applied; and see to the same effect Rex v. McDonald, 11 D.L.R. 710, 21 Can. Cr. Cas. 229 (P.E.I.).]

Rex v. Thompson, 21 D.L.R. 743, 23 Can. Cr. Cas. 463, 48 N.S.R. 515.

(§ III J—94)—SECOND AND THIRD OFFENCES.

There must be a conviction as for a second offence before there can be a conviction as for a third offence under the Canada Temperance Act, R.S.C. 1906, ch. 143; and the magistrate who has entered a conviction made as for a third offence, and which recites two previous convictions, must be taken to have found that there was in fact a second conviction as for a second offence. (Per McLeod, C.J.)

Ex parte Gogan; Rex v. Steeves, 24 Can. Cr. Cas. 371, 43 N.B.R. 285.

(§ III J—94)—THIRD OFFENCE.

Where the magistrate had jurisdiction over the subject-matter and over the person, and certiorari is taken away by statute in respect of the particular offence, the Court, upon a certiorari necessarily limited to the question of jurisdiction, cannot interfere with a summary conviction as for a third offence under the Canada Temperance Act, R.S.C. 1906, ch. 152, which recites two prior convictions proved before the magistrate, although such third conviction does not specify that the second conviction was made as for a second offence.

Ex parte Gogan; Rex v. Steeves, 24 Can. Cr. Cas. 371, 43 N.B.R. 285.

IV. Civil remedies.

A. IN GENERAL.

(§ IV A—95)—ACTIONS AGAINST LIQUOR LICENSEES—SUSPENSION BECAUSE WAR.

Only actions arising out of the business as liquor licensee are within a proclamation prohibiting actions against such licensees whose interests are affected by war, and there is no prohibition against creditors whose debts have accrued in another capacity, such as merchant or farmer; nor is any protection given to property other than the licensed premises or that used in connection therewith. [Novello v. Toogood, 1 B. & C. 554, applied.]

Imperial Elevator & Lumber Co. v. Kuss, 25 D.L.R. 55, 8 S.L.R. 360, 9 W.W.R. 606, 32 W.L.R. 941, varying 9 W.W.R. 164, 32 W.L.R. 378.

[Followed in Miller v. Kuss, 25 D.L.R. 816.]

INVENTIONS.

Patents for, see Patents.

IRREGULAR INDORSEMENT.

See Bills and Notes; Cheques; Banks.

JEOPARDY.

See Criminal Law.

JITNEY.

See Automobiles; Carriers; Street Railways.

JOINDER.

Of causes of action, see Action; Admiralty.

Of parties, see Parties, I.

Joinder of issues, see Pleading.

JOINT CREDITORS AND DEBTORS.

I. IN GENERAL.

II. RELEASE OF ONE JOINT DEBTOR.

I. In general.

(§ I—1)—SEVERAL PURCHASERS OF LAND — JOINT AND SEVERAL LIABILITY.

Joint and several liability must be stipulated for and will not be presumed beyond the cases provided for by law. Thus there is no such liability in case of a sale on the part of a purchasers, even when they have purchased immovables en bloc and have created a joint estate among them, if such has not been expressly created by the deed of sale. Each in such case owes only his proportion of the balance due on the price of sale.

Versailles v. Harel, 47 Que. S.C. 468.

II. Release of one joint debtor.

(§ II—6)—ASSIGNMENT OF DEBT—JOINT LIABILITY—MISE EN DEMEURE.

When in a transfer of debt the transferor undertakes, jointly and severally with all the debtors mentioned in it, to pay the sum due on default of the debtors, renouncing at the same time to benefit of discussion, the transferor can be sued alone at the maturity of the debt without an allegation of mise en demeure or demand of payment or of a default in payment on the part of the other debtors.

Décarie v. Archambault, 47 Que. S.C. 302.

JOINT TORT-FEASORS.

See Contribution; Negligence.

JUDGES.

See Courts; Trial; Appeal.

(See previous Annual Digests.)

JUDGMENT.

I. RENDITION; ENTRY; AMENDMENT; SUMMARY JUDGMENT.

A. In general.

B. By confession.

C. Jurisdiction; necessity of service or appearance.

D. For and against whom; several or joint.

E. Form and substance.

F. Entry; record; summary or speedy judgment.

G. Modification; varying terms of.

II. EFFECT AND CONCLUSIVENESS; RES JUDICATA.

- A. In general.
- B. Decrees interlocutory, by default, direction, or on demurrer; dismissal.
- C. Collateral attack.
- D. What matters concluded.
- E. As to parties.

III. THE LIEN.

- A. In general.
- B. On what property.
- C. Sufficiency of index.

IV. FOREIGN JUDGMENTS.

- A. Of foreign country.
- B. Of sister province.

V. DISCHARGE; ASSIGNMENT.

VI. REVIVAL; ENFORCEMENT.

- A. Enforcement.
- B. Revival; scire facias.

VII. RELIEF AGAINST; REHEARING; ACTIONS TO ANNUL.

- A. In general.
- B. Defences.
- C. Grounds.
- D. Procedure.
- E. Time.
- F. Rehearing.

Execution and satisfaction of judgment, see Execution.

As affected by moratorium, see Moratorium.

Annotations.

Foreign judgment, action upon: 9 D.L.R. 788, 14 D.L.R. 43.

Judgment; Conclusiveness as to future action; Res judicata: 6 D.L.R. 294.

Judgment; Enforcement; Sequestration: 14 D.L.R. 855.

Judgment as affected by moratorium: 22 D.L.R. 865.

I. Rendition; entry; amendment; summary judgment.

A. IN GENERAL.

(§ I A-1)—ELECTION OF REMEDIES—NEGLIGENCE—WORKMEN'S COMPENSATION—REFERENCE TO IN FORMAL JUDGMENT.

Where the trial Judge dismisses a negligence action brought by a workman against his employer and others, but states that the plaintiff would be entitled to compensation under the Workmen's Compensation Act, Alta., it is improper to make a reference to the compensation in the formal decision issued in the negligence action at least where the amount of the compensation has not been fixed; a clause in the formal judgment inserted at the request of the defendants, purporting to declare the plaintiff entitled to compensation under the Act and to reserve leave to apply to fix the amount should the parties not agree, will not operate in bar of the plaintiff's appeal from the dismissal of the negligence action where the plaintiff had not elected to abandon the common law remedy and to accept compensation under the Act. [Isaacson v. New Grand Ltd., [1903] 1 K.B. 539, applied.]

Klukas v. Thompson & Co., 24 D.L.R. 67, 8 W.W.R. 778, 31 W.L.R. 438, reversing 21 D.L.R. 312, 7 W.W.R. 1102.

(§ I A-1)—SUMMARY JUDGMENT—PRINCIPLES GOVERNING THE GRANTING OF.

Summary judgment should not be granted when there is any serious conflict as to a matter of fact or any real difficulty as to a matter of law. [Jacobs v. Booth's Distillery Co., 85 L.T. 263; Sheppards v. Wilkinson, 6 T.L.R. 13; Crawford v. Gilmore, 30 L.R. (Ir.) 238; Alloway v. Pamaranke, 8 W.L.R. 134; Graves v. Mason, 8 W.L.R. 265, referred to.]

Western Security Bank v. Martin, 31 W.L.R. 149.

(§ I A-2)—BY DEFAULT—SERVICE OF NOTICE OF MOTION—DELAY.

The service of a notice of motion for leave to enter judgment in default of defence upon a liquidated demand will not deprive the plaintiff of the right to sign judgment in default of defence under Sask. Rules of Court 224 without an order and without waiting for the return of the motion which was afterwards abandoned; and unexplained delay for a long time in moving against the judgment will disentitle the defendant to relief on the ground that he was misled by the service of the notice.

Mills v. Harris, 21 D.L.R. 230, 8 S.L.R. 113, 8 W.W.R. 428.

(§ I A-2)—BY DEFAULT—JURISDICTION TO GRANT—ABSENTEE—PROPERTY WITHIN PROVINCE.

Art. 94 (4), C.P., gives jurisdiction over the defendant who has left his domicile in the province of Quebec or has never had any, when the cause of action did not originate in the district wherein he is summoned, only when the plaintiff proves that the defendant possess property therein. When judgment is obtained by default, in the above case without such proof, the defendant, who has neither domicile nor property in the above-mentioned district, may have the judgment set aside by the Court of Review for want of jurisdiction.

Bank of B.N.A. v. Levy, 47 Que. S.C. 282.

D. FOR AND AGAINST WHOM; SEVERAL OR JOINT.

(§ I D-20)—PERSONAL OR PROPRIETARY JUDGMENT—MARRIED WOMAN.

A judgment entered against a defendant, who was a married woman, though a personal judgment, instead of a proprietary one, was not a nullity.

Joss v. Fairgrieve, 32 O.L.R. 117, 6 O.W.N. 640, 7 O.W.N. 184.

E. FORM AND SUBSTANCE.

(§ I E 3-35)—ACTION ON GUARANTY—LIQUIDATED DEMAND.

Manitoba K.B. Rule 625 is not confined to causes of action formerly covered by the common counts, but extends also to a liqui-

dated demand, and leave to sign final judgment thereunder may be granted in respect of an action upon a guarantee of a debt which was a liquidated demand if sufficient particulars of the plaintiff's claim upon the guarantee are disclosed and the defendant guarantor files no affidavit negating liability or stating that he does not know that the debt is due. [Lloyd's Banking Co. v. Ogle, 1 Ex. D. 262, distinguished.]

Merchants Bank v. Hay, 23 D.L.R. 554, 25 Man. L.R. 275, 8 W.W.R. 303, 31 W.L.R. 154.

(§ I E 3—35)—MOTION FOR ON ADMISSIONS IN DEFENCE—ORDER FOR PAYMENT INTO COURT.

On application for judgment upon admissions in the defence under O. XXXII, r. 6, the defendant company (a foreign corporation licensed to carry on business in British Columbia) set up that the money sued for was claimed by third parties under a foreign jurisdiction. An order was made directing the defendant company to pay the amount claimed into Court, but that the said moneys be not paid out unless notice of the application therefor be served on the foreign claimants; the application for judgment to be finally disposed of on that application. Held, on appeal, affirming the decision of Hunter, C.J.B.C. (Martin and McPhillips, J.J.A., dissenting), that the order was properly made in the circumstances.

Lockwood v. National Surety Co., 21 B.C.R. 249.

(§ I E 3—35)—REFERENCE ORDER FOR PAYMENT IN ACCORDANCE WITH REFEREE'S FINDING—PRACTICE—NECESSITY FOR MOTION FOR JUDGMENT ON REPORT—JUDICATURE ACT, SECS. 64, 65—RULE 772—FORM 75.

Dyet v. Truesdale, 7 O.W.N. 663.

F. ENTRY; RECORD; SUMMARY OR SPEEDY JUDGMENT.

(§ I F 1—45)—SUMMARY JUDGMENT—APPLICATION AFTER JOINDER OF ISSUES—ACCOMMODATION NOTE—INDORSEMENT BY PLAINTIFF—DEFENCE OF EQUAL LIABILITY. Rutherford v. Taylor, 24 D.L.R. 882, 9 A.L.R. 129, 8 W.W.R. 790.

(§ I F 1—45)—SUMMARY JUDGMENT—APPLICATION AFTER JOINDER OF ISSUE—DEFENCE OF AGREEMENT TO RENEW NOTE. Cushing v. Horner, 25 D.L.R. 824, 9 W.W.R. 289, 32 W.L.R. 588.

(§ I F 1—46)—SUMMARY JUDGMENT—LIQUIDATED DEMAND.

An application for summary judgment upon a liquidated demand should not be granted where there is any serious conflict as to matter of fact, or any real difficulty as to matter of law. [Jacobs v. Booth's Distillery Co., 85 L.T. 262, followed.]

Weyburn Security Bank v. Martin and Diemert, 22 D.L.R. 689, 8 W.W.R. 228.

(§ I F 1—46)—SUMMARY JUDGMENT—ACTION ON PROMISSORY NOTES—DEFENCE.

Judgment should only be ordered under O. XIV, where, assuming all the facts in favour of the defendant, they do not amount to a defence in law. On motion for summary judgment under O. XIV, in an action against the makers and guarantors of certain promissory notes, the defence was raised that the notes were given to act as vouchers for an overdraft which had previously been verbally arranged for between the bank and the manager of the defendant company, but the only evidence of the arrangement produced by the defence in the motion was the affidavit and cross-examination of one of the defendants who had received his information from the manager of the defendant company, whose evidence was not given. The order for final judgment was made. Held, on appeal (per Macdonald, C.J.A., and Galliher, J.A.), that the appeal should be dismissed. Per Martin and McPhillips, J.J.A.: That it could not be said that there was no defence, and no question of fact to be determined which might not support it. The defendants should, therefore, be allowed to go to trial. The Court being equally divided, the appeal was dismissed.

Canadian Bank of Commerce v. Indian River Gravel Co., 20 B.C.R. 180.

(§ I F 1—46)—SUMMARY JUDGMENT—ACTION ON GUARANTEE.

An order for summary judgment cannot be made under r. 625 or otherwise, when the cause of action is upon the guarantee of a debt.

Merchants Bank v. Hay, 7 W.W.R. 1223.

(§ I F 1—46)—SUMMARY JUDGMENT—RULE 62—ACTION BEGUN BY SPECIALLY ENDORSED WRIT—MOTION FOR JUDGMENT BEFORE APPEARANCE.

Canadian General Electric Co. v. Dodds, 7 O.W.N. 665.

(§ I F 1—46)—SUMMARY JUDGMENT—APPLICATION FOR—EVIDENCE—DEFENCE—UNCONDITIONAL LEAVE TO DEFEND.

Naiman v. Wright, 7 O.W.N. 728.

(§ I F 1—46)—SUMMARY JUDGMENT—MOTION FOR—ACTION FOR THE PRICE OF GOODS SOLD AND DELIVERED—DISPUTED FACTS—REFUSAL OF MOTION.

Leitch Bros. Flour Mills v. Dominion Bakery Co., 8 O.W.N. 83.

(§ I F 1—46)—SUMMARY JUDGMENT—RULES 56, 57—AFFIDAVIT FILED WITH APPEARANCE—"GOOD DEFENCE ON THE MERITS"—WRIT OF SUMMONS—ENDORSEMENT—PRACTICE.

Martin v. Grantham, 8 O.W.N. 616.

(§ I F 1—46)—SUMMARY JUDGMENT—RULE 57—ACTION ON PROMISSORY NOTE—DEFENCE—AUTHORITY OF AGENT OF MAKER—POWER OF ATTORNEY—SCOPE OF—CONDITIONAL LEAVE TO DEFEND.

Canada Glass Mantels and Tiles Ltd. v. Shepard, 9 O.W.N. 141.

G. MODIFICATION; VARYING TERMS OF.

(*§ I G—55*)—JURISDICTION OF COURT TO MODIFY—ABANDONMENT.

After having pronounced the final judgment in a case, the Court of Review has no jurisdiction to give effect to a total or partial abandonment of said judgment nor to modify it by reason of the abandonment.

Gignac v. Can. North. Que. R. Co., 48 Que. S.C. 319.

(*§ I G—55*)—AMENDMENT OF FINAL JUDGMENT.

A final judgment which decides the merits of the litigation virtually maintains a *res en droit* dismissed by an interlocutory judgment but without containing any reference to this inscription *en droit*, can be afterwards amended by the Judge who delivered the final judgment on application of one of the parties by adding provisions maintaining the inscription.

Peloquin v. Clermont, 47 Que. S.C. 403.

(*§ I G—55*)—CORRECTION—POWER OF COURT WHERE JUDGMENT AS ISSUED DOES NOT CONFORM TO JUDGMENT AS PRONOUNCED.

Sask. Land and Homestead Co. v. Moore, 22 D.L.R. 903, 8 O.W.N. 458, 525.

II. Effect and conclusiveness; *res judicata*.

A. IN GENERAL.

(*§ II A—60*) — *RES JUDICATA* — POINTS COVERED.

The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time. [*Henderson v. Henderson*, 3 Hare 114, applied.]

Churchill v. McRae, 22 D.L.R. 99, 8 S.L.R. 105, 8 W.W.R. 394, 30 W.L.R. 945.

(*§ II A—60*)—*RES JUDICATA* — NEW ISSUE — PRIOR OPINION OF JUDGES.

The doctrine of *res judicata* applies to bind the parties by the decision of the issues raised in a prior case, but does not bind the parties or the Court trying a second case raising a new issue under the same contract in regard to mere expressions of opinion by the Judges in appeal, on delivering their judgment in the first case, as to the interpretation of a document adduced in evidence where the record in the first case raised no such issue. [*Pedlar v. Road Block Gold Mines*, [1905] 2 Ch. 427, referred to.]

Swanson v. McArthur, 21 D.L.R. 580.

(*§ II A—60*)—*RES JUDICATA*—JUDGMENT FOR POSSESSION OF LAND—SECOND ACTION FOR CHATTELS.

Where a contract of sale of lands included also certain chattels and both land and chattels were sold for a lump sum without

its appearing how much was to be paid for the chattels, the vendor who recovers judgment for possession of the land in an action to forfeit the payments made and to foreclose the purchaser's interest in the land, and who does not claim in such action any relief as regards the chattels, will be barred by the judgment in such action from claiming the chattels in a second action, the matter having become *res judicata*.

Churchill v. McRae, 22 D.L.R. 99, 8 S.L.R. 105, 8 W.W.R. 394, 30 W.L.R. 945.

(*§ II A—60*) — *EXECUTION* — INTERPLEADER — SECOND EXECUTION CREDITOR NOT PARTY TO FIRST INTERPLEADER.

Res judicata cannot be set up to bar the claimant of goods seized under execution in respect of an adverse decision in an interpleader issue with another execution creditor where the second seizure in question, although in respect of the same chattel, was not made until after the first interpleader issue was decided and where the execution creditor under whose execution the sheriff made the second seizure had not been made a party to the first interpleader although his execution was then in the sheriff's hands.

Gregory v. Great West Lumber Co., 22 D.L.R. 70.

(*§ II A—60*)—*RES JUDICATA*—SECOND ACTION BY DIFFERENT PARTIES.

The identity of the parties is necessary to support a plea of *res judicata* and such defence is not available where the first action was brought by a different company from the company suing in the second action and was dismissed because there was no assignment by the latter to the former of the claim sued upon.

International Harvester Co. v. Leeson, 23 D.L.R. 674, 31 W.L.R. 219.

(*§ II A—60*)—*RES JUDICATA*—ANNUAL TAXATION.

Where municipal taxes are imposed on a separate valuation roll each year, judgment on one year's tax does not constitute *chose jugée* (*res judicata*) as regards the action for the tax of a subsequent year.

Montreal L. H. & P. Co. v. Chambly Basin, 24 D.L.R. 665.

(*§ II A—60*)—*CHOSE JUGÉE* ON INSCRIPTION.

A judgment delivered on an inscription *en droit* is *chose jugée* between the parties.

Filiatrault v. Meloche, 47 Que. S.C. 108.

(*§ II A—62*)—*RES JUDICATA*—SECOND PROSECUTION OF AFFILIATION PROCEEDINGS.

The effect of a certificate of dismissal of affiliation proceedings under the *Illegitimate Children's Act*, R.S.M. 1913, ch. 92, granted after a hearing on the merits pursuant to Cr. Code, sec. 730 (made applicable to such proceedings by the *Summary Convictions Act*, R.S.M., 1913, ch. 189, sec. 4), is to bar further proceedings upon a second information before another magistrate for the same matter on production of the certificate; the jurisdiction of the second magistrate is at an end

when in hearing the facts relevant to the defence of the previous acquittal or dismissal of the charge the conclusion is clear that the matter before him has been previously disposed of by a competent tribunal. [R. v. Quinn, 10 Can. Cr. Cas. 412, 11 O.L.R. 242, and R. v. Herrington, 3 N.R. 468, referred to; Reg. v. Machen, 14 A. & E. 74; Reg. v. Gaunt, L.R. 2 Q.B. 466, and Williams v. Davies, 11 Q.B.D. 74, distinguished.]

Davis v. Feinstein, 24 D.L.R. 798, 24 Can. Cr. Cas. 160, 25 Man. L.R. 507, 8 W.W.R. 1003, 31 W.L.R. 635.

B. DECREES INTERLOCUTORY, BY DEFAULT, DIRECTION, OR ON DEMURRER; DISMISSAL.

(§ II B-76)—DISMISSING PETITION TO QUASH SAISIE-ARRET—CHOSE JUGÉE.

A judgment of the Superior Court, confirmed by the Court of Review, dismissing a petition of the defendant to have a saisie-arêt before judgment quashed, because this petition had been filed without the permission of a Judge after the expiration of the delay for contesting the saisie-arêt, is chose jugée upon the question of whether the defendant was or was not within the legal delays for filing his contestation, which ground can be raised on the hearing of a motion to obtain permission to file it.

Ménard v. Choiniere, 24 Que. K.B. 528.

C. COLLATERAL ATTACK.

(§ II C 1-80)—ORDER FOR ARREST—AUTHORIZATION TO CURATOR.

An opposition to judgment will not lie against an order for arrest or an authorization, from a Judge to a curator in a judicial abandonment of property, to continue proceedings commenced by a temporary guardian.

Laurentides Brique et Sable Co. v. Charron, 48 Que. S.C. 4.

E. AS TO PARTIES.

(§ II E 1-150)—RES JUDICATA — PRINCIPAL AND AGENT.

Where an agent has been sued and judgment taken against him, it operates as res judicata barring the prosecution of an action on the same grounds against the principal, even if the judgment is by default. [Partington v. Hawthorne, 52 J.P. 807, applied.]

M. Brennen & Sons v. Thompson, 22 D.L.R. 375, 33 O.L.R. 465, 8 O.W.N. 206.

[Followed in Davis Acetylene Gas Co. v. Morrison, 23 D.L.R. 871.]

(§ II E 1-152)—ACTION FOR DEATH OF SERVANT—EMPLOYER AND CONTRACTOR.

Where an action for negligently causing death is brought by the representative of the deceased workman against the employer in respect of negligence in operating a hoist in building operations as to which the employer and a sub-contractor would each have a measure of responsibility, the taking of judgment and receiving satisfaction in the

action against the employer is a bar to a second action against the sub-contractor in respect of his alleged negligence; and after receiving satisfaction of the judgment so recovered against the one, the plaintiff is estopped in the second action from saying that the injury resulted from the negligence of the sub-contractor only and that the principal contractor who had consented to judgment in the first action was not in fact liable. [Brown v. Cambridge, 85 Mass. 476; Kemball v. Hamilton, 4 A.C. 504, applied; Atlantic Dock Co. v. New York, 43 N.Y. 64; Donovan v. Laing, [1893] 1 Q.B. 629, distinguished.]

Black v. Dominion Fireproofing Co., 23 D.L.R. 161, 8 W.W.R. 823, 31 W.L.R. 352.

III. The lien.

(See previous Annual Digests.)

IV. Foreign judgments.

B. OF SISTER PROVINCE.

(§ IV B 1-232)—JUDGMENT OBTAINED ON CONDITIONAL APPEARANCE—ATTORNMEN TO JURISDICTION BY PLEA TO MERITS.

A Dominion company, with its head office in Alberta, entered a conditional appearance in Ontario, expressed to be "without prejudice to the right of defendant to dispute the jurisdiction of the Court." In its statement of defence, defendant, after stating that it was delivered without prejudice to its said rights, set out grounds of defence to the action on the merits. The action was tried in the presence of defendant's counsel, and the plaintiff, and judgment was given for the latter. Held, that the plaintiff was entitled to sue in Alberta upon the said judgment on the ground that defendant attorned to the jurisdiction of the foreign Court and could not afterwards be heard to say that it was not bound by the judgment of the said Court. [Boissiere v. Brockner & Co., 6 T.L.R. 85, followed.]

McFadden v. Colville Ranching Co., 30 W.L.R. 909, 8 W.W.R. 163.

V. Discharge; assignment.

(§ V-251)—SATISFACTION—TRIAL OF ISSUE—PARTIES — SHERIFF — SOLICITOR — INJUNCTION.

Brazeau v. Bedard, 7 O.W.N. 613.

VI. Revival; enforcement.

(See previous Annual Digests.)

A. ENFORCEMENT.

(§ VI A-255)—DAMAGES FOR NON-COMPLIANCE WITH—NATURE AND REQUISITES AS BASIS OF ACTION.

To be available as a cause of action, a judgment must be definitive and personal for the payment of money, of a character as would support an action of debt under the old forms of procedure; but no action will lie to recover damages for the breach of

directions of a judgment for the return of certain bees and honey, the detention of which resulted in the destruction of that property.

Parks v. Simpson, 22 D.L.R. 840, 33 O.L.R. 382, 8 O.W.N. 154.

(§ VI A—255)—EXECUTION—LEAVE TO ISSUE
—JURISDICTION OF COUNTY COURT —
TITLE TO LAND.

Under the County Court Act, N.S., secs. 44 and 45, a motion for leave to issue execution on a judgment of the County Court may properly be referred to the Supreme Court en banc where a question of title to land bona fide comes into question by reason of the judgment being for purchase money of land and of an objection being raised in good faith of want of title and that the description of the land offered to be conveyed was of a different property.

Kaulbach v. Woodworth, 22 D.L.R. 811, 49 N.S.R. 46.

(§ VI A—255) — EXECUTION CAVEATS—WHEN
ALLOWED—LAND TITLES ACT.

Sec. 125 of the Land Titles Act, Sask., which provides for lodging a caveat by an execution creditor, applies only where the interest of the execution debtor in the land is such as could be seized and sold by the sheriff under the execution were it not that the title is registered in a name other than that of the execution debtor. [*Gaar-Scott v. Giguere*, 12 W.L.R. 245, considered.]

Foss v. Sterling Loan, 21 D.L.R. 755, 8 S.L.R. 289, 8 W.W.R. 569.

[Affirmed in 23 D.L.R. 540.]

(§ VI A—255) — EXECUTION — UNREGIS-
TERED INTEREST OF DEBTOR.

The procedure to be followed by an execution creditor to realize against the unregistered interest of his debtor as a purchaser of lands under contract is an application under Sask. Rules 336-341 and not by the filing of a caveat in support of the execution.

Foss v. Sterling Loan, 21 D.L.R. 755, 8 S.L.R. 289, 8 W.W.R. 569.

[Affirmed in 23 D.L.R. 540.]

VII. Relief against; rehearing; actions to
annul.

A. IN GENERAL.

(§ VII A—271)—REQUÊTE CIVILE — JURIS-
DICTION—DOCUMENTARY EVIDENCE.

A requête civile should be presented to the Court in which it is desired to have the judgment revoked. Thus a requête civile against a judgment of the Court of Review at Montreal reversing that of the Superior Court of the district of Terrebonne should be presented to the Court of Review at Montreal. When a requête civile is based upon the fact that an evidentiary document was omitted from the record submitted to the Court, the petitioner should establish that such document was decisive and would have exercised an important influence upon the final decision, and that with it the

judgment would have been different; if he alleges that the opposite party has had recourse to artifices, he should state facts which shew their nature and effect. A party who knows that one of the evidentiary documents is missing from the record and who nevertheless agrees to plead and submit his case without the document cannot after judgment have recourse to a requête civile based on such omission.

Mayer v. Miller, 48 Que. S.C. 145.

(§ VII A—271) — MASTER'S REPORT — WHEN
REOPENING REFUSED.

Hancock v. Rose, 31 W.L.R. 547.

(§ VII A—271)—REVIEW OF JUDGMENT RE-
FUSING APPLICATION—APPEAL.

Where a Judge of the Supreme Court makes an order refusing an application, the remedy is, in general, by appeal, unless leave be given to renew it.

Irving and Morris v. Bucke, 21 B.C.R. 17.

C. GROUNDS.

(§ VII C—282)—BY DEFAULT—INABILITY TO
FURNISH COSTS.

A judgment obtained in default of appearance will be set aside on an application made one year subsequent to the entry of the judgment when it appears that the delay was due to the defendant's inability to secure the costs of the application.

Gordon v. Violette, 24 D.L.R. 721, 9 W.W.R. 127, 32 W.L.R. 389.

(§ VII C—282) — BY DEFAULT — RELIEF
AGAINST.

The Court will not relieve against a judgment by default obtained for want of prosecution after an appearance has been entered by counsel; nor is the absence of counsel from the jurisdiction when the case is called sufficient ground for such relief, particularly where the affidavit accompanying the petition does not disclose a well-founded defence on the merits.

Putnick v. Henry, 47 Que. S.C. 184.

(§ VII C—282)—SETTING ASIDE JUDGMENT
BY DEFAULT — INEFFECTIVE SERVICE —
LEAVE TO DEFEND—TERMS.

Defendants' manager, on being served with the statement of claim, was advised that the service was of no effect, as the proper party to be served would be the Insurance Inspector. He thereupon wrote to the plaintiff's solicitors informing them of the supposed mistake, and, having received no reply, believed that it was not necessary for him to do anything further. Plaintiff's solicitors signed interlocutory judgment in default of a defence and afterwards proceeded to trial of the action for assessment of plaintiff's fire loss without notice to the defendants, and final judgment was entered in the action for \$526.44, besides taxable costs. As soon as defendants heard of the judgment they moved to set it aside and to be allowed to defend and shewed, as grounds of defence, (1) that

plaintiff had absolutely assigned his claim after the fire; (2) that the plaintiff's actual loss was only \$189.50. Held, by the Court of Appeal, varying the order of Galt, J., that the judgment should be set aside and the defendants allowed in to defend, but only upon payment to the plaintiff's solicitor of the plaintiff's costs subsequent to the service of the statement of claim, and paying into Court the sum of \$189.50 within ten days, and that costs of the application to Galt, J., and of the appeal should be costs in the cause to the plaintiff in any event of the cause. [29 W.L.R. 482, varied.]

Abrahamson v. Colonial Ass. Co., 24 Man. L.R. 852.

(§ VII C—282)—BY DEFAULT—JURISDICTION—ABSENTEES—PROPERTY WITHIN.

Article 94, sec. 4, C.P., gives jurisdiction over a defendant who has left his domicile in the province of Quebec or has never had any, when the cause of action did not originate in the district wherein he is summoned, only when the plaintiff proves that the defendant possess property therein. When judgment is obtained by default, in the above case, without such proof, the defendant, who has neither domicile nor property in the above-mentioned district, may have the judgment set aside by the Court of Review for want of jurisdiction.

Bank of B.N.A. v. Levy, 47 Que. S.C. 282.

(§ VII C—282) — BY DEFAULT — RELIEF AGAINST—DELAY—LEAVE TO SHEW PAYMENT.

Huckell v. Gale & Williams, 25 D.L.R. 761, 9 W.W.R. 550.

(§ VII C—282)—DEFAULT JUDGMENT—MOTION TO SET ASIDE—LACHES.

Fussell v. Colttman, 9 O.W.N. 108.

E. TIME.

(§ VII E—295)—APPLICATION TO SET ASIDE—LEAVE TO DEFEND—DELAY.

Where the entry of judgment is regular an application to set it aside and for leave to defend should be made as soon as possible after the judgment came to the defendant's knowledge, though some delay is not unnecessarily fatal to the application if the parties can be restored to their former position.

Mills v. Harris, 21 D.L.R. 230, 8 S.L.R. 113, 8 W.W.R. 428.

JUDGMENT DEBTOR.

Assignment for creditors, see Assignments for Creditors.

Writs of execution against, see Execution.

Attachment process against, see Attachment; Arrest.

Garnishment of debt owing by third party to debtor, see Garnishment.

JUDICIAL GUARDIAN.

See Guardian and Ward.

JUDICIAL NOTICE.

See Evidence.

JUDICIAL RECORDS.

See Records and Registry Laws; Appeal.

JUDICIAL SALE.

I. THE SALE GENERALLY.

- A. In general.
- B. What may be sold.
- C. Who bound by.

II. EFFECT; VALIDITY; DEED.

- A. In general.
- B. The deed.

III. PURCHASERS AND THEIR RIGHTS AND DUTIES.

- A. In general.
- B. Title acquired.

IV. CONFIRMATION; SETTING ASIDE; RE-SALE.

V. REDEMPTION.

VI. DISTRIBUTION AND CONTROL OF PROCEEDS.

See also Execution.

Foreclosure sales, see Mortgage; Vendor and Purchaser.

I. The sale generally.

(See previous Annual Digests.)

II. Effect; validity; deed.

A. IN GENERAL.

(§ II A—15)—SALE OF MINERAL CLAIMS UNDER EXECUTION—VALIDITY OF BIDS.

The sale by the sheriff under execution of a mineral claim under the Mining Act, R.S. B.C., ch. 157, is not invalid because the purchaser was not the holder of a free miner certificate at the time of making his bid at the sheriff's sale, if he had a certificate at the later date when the sheriff made a bill of sale of the claim to him; the Court will uphold sheriff's sales bona fide made notwithstanding mere irregularities. [*Crawshaw v. Harrison*, [1894] 1 Q.B. 79, 63 L.J. Q.B. 91, referred to.]

Roundy v. Salinas, 22 D.L.R. 315, 8 W.W.R. 712, 31 W.L.R. 338.

(§ II A—19)—VOID SALE—INSUFFICIENT NOTICE.

The judicial sale of moveables made with a single notice in English and one in French on December 27, when the notice of sale was only posted in the sheriff's office on December 19, is illegal and void, and confers no title of ownership upon the purchaser.

Clement v. Déval, 47 Que. S.C. 196.

III. Purchasers and their rights and duties.

A. IN GENERAL.

(§ III A—26)—SALE UNDER EXECUTION—COVENANT OF TITLE—LIABILITY OF SHERIFF TO PURCHASER.

Although a sheriff is not required to covenant for good title to a purchaser in a sale under execution, still, where in the absence

of fraud or mistake a covenant of such effect and for indemnity to the purchaser is entered into by the sheriff in his bill of sale to the articles sold, he cannot be relieved from liability thereunder where the title of the purchaser failed because of an outstanding mortgage.

Sharp v. Ingles, 23 D.L.R. 636, 8 W.W.R. 1325, 32 W.L.R. 150.

(§ III A—29)—FORECLOSURE SALE—UNPAID VENDOR PURCHASING AT SALE—EFFECT ON DEFICIENCY JUDGMENT.

A deficiency judgment obtained in a foreclosure proceeding invalidly conducted by permitting the unpaid vendor to bid at the sale, and upon whose bid the sale of the property is confirmed at an upset price, is invalid and unenforceable against the guarantor of the defaulting purchaser.

Crown Life Ins. Co. v. Clarke, 25 D.L.R. 519, 9 A.L.R. 97, 9 W.W.R. 333, 32 W.L.R. 654.

(§ III A—29)—LEAVE TO PLAINTIFF TO BID.

The objection to allowing a person who has the conduct of a sale to bid disappears when the property is sold at an upset price instead of subject to a reserve bid. Review of cases in which party with conduct of sale was allowed to bid.

Griesbach v. Hogan, 8 W.W.R. 356.

[Disapproved in Crown Life Ass. Co. v. Clarke, 25 D.L.R. 519, 9 W.W.R. 333, 32 W.L.R. 654.]

IV. Confirmation; setting aside; resale.

(§ IV—35)—PETITION TO ANNUL—NOTICE—PRESENTATION.

Where at the end of a petition to annul a decree there is a notice of presentation to the Judge sitting for a certain district or in his absence to the prothonotary for the said Court, and the petition is properly served on the attorney for the other party, it is properly presented if on the day fixed it is, in the absence of the Judge, presented to the prothonotary who marks it "filed."

James Bay & E.R. Co. v. Bernard, 23 D.L.R. 701, 24 Que. K.B. 6.

V. Redemption.

VI. Distribution and control of proceeds.

(See previous Annual Digests.)

JURISDICTION.

In general, see Courts; Appeal.

Review of municipal by-laws, see Courts.

Review of jurisdiction, see Certiorari; Appeal.

Of Railway Board, see Railways; Carriers; Railway Commission.

Conflicting jurisdiction, see Conflict of Law.

In criminal cases, see Criminal Law; Summary Convictions.

Admiralty matters, see Admiralty; Shipping; Salvage; Seamen.

JURY.

I. RIGHT TO TRIAL BY.

- A. In general.
- B. When right exists.
- C. Loss or waiver of right.
- D. Denial or infringement of right.

II. IMPANELING; SELECTION; COMPETENCY.

- A. In general.
- B. Qualification; competency.
- C. Examinations.
- D. Peremptory challenges.
- E. Exclusion; rejection.

III. NUMBER.

IV. SPECIAL JURY.

V. VERDICT; SETTING ASIDE.

VI. EXTRA POWERS CONFERRED ON JURY BY AGREEMENT OF PARTIES.

Review of findings, see Appeal.

As to grand jury, see Grand Jury.

Function of, instructions to, verdict or findings of, see Trial.

I. Right to trial by.

B. WHEN RIGHT EXISTS.

(§ I B 1—10)—ACTION BY HUSBAND FOR INJURIES TO WIFE.

A jury trial may be had in an action for damages by a husband for corporal injuries suffered by his wife in a street car collision.

Kazaransky v. Montreal Tramways Co., 48 Que. S.C. 76.

(§ I B 1—10) — JURY NOTICE — MOTION TO STRIKE OUT — DISCRETION — PLACE OF TRIAL.

McConnell v. Township of Toronto, 8 O.W.N. 82.

(§ I B 1—10) — JURY NOTICE — MOTION TO STRIKE OUT—ISSUES OF FACT—APPLICATION TO JUDGE IN CHAMBERS.

Galvin v. Imperial Guarantee and Accident Ins. Co., 8 O.W.N. 402.

(§ I B 1—10)—ACTION FOR MALPRACTICE AND ASSAULT—MOTION TO STRIKE OUT JURY NOTICE — RULE 398 — DISCRETION OF JUDGE IN CHAMBERS — MOTION ADJOURNED BEFORE TRIAL JUDGE.

Wilkinson v. Hayes, 9 O.W.N. 124.

D. DENIAL OR INFRINGEMENT OF RIGHT.

(§ I D—31) — JURY NOTICE — MOTION TO STRIKE OUT—POWERS OF JUDGE IN CHAMBERS—DISCRETION—RULE 398.

Neely's Limited v. Dredge, 9 O.W.N. 247.

II. Impaneling; selection; competency.

A. IN GENERAL.

(§ II A—50)—MIXED LANGUAGE.

The plaintiff has not the right to obtain a mixed jury or a jury "de medietate lingue" if the defendant, a corporation, is opposed to it, although the latter can itself demand it.

Montreal Tramways Co. v. Crowe, 24 D.L.R. 567, 24 Que. K.B. 122.

(§ II A-52)—STATUTORY DIRECTIONS—CHALLENGE.

Cr. Code, sec. 1011, which directs that certain omissions of statutory directions as to the jury or jurors shall not be a ground of impeaching any verdict nor be allowed for error upon any appeal, applies to an objection raised by challenge of the array of jurors, as well as to objections taken after verdict. [R. v. Edmonds, 4 B. & Ald. 471, 1 St. Tr. N.S. 785, and Carmarthen v. Evans, 10 M. & W. 274, referred to.]

Rex v. Morrow, 24 Can. Cr. Cas. 310.

(§ II A-52)—CHALLENGE TO ARRAY—JURY LIST NOT REVISED—PREJUDICE.

Where the jury lists had not been revised annually according to law by a revising board exercising ministerial duties (R.S. Que., art. 3423), but the provincial law stipulated that the old lists should remain in force until the new ones were completed or revised (R.S. Que. art. 3432), the use of a list revised by the deputy sheriff who was clerk to the revising board will not constitute a ground of challenge to the array (Cr. Code, sec. 925), although the sheriff as a member of the revising board was himself involved in the neglect to revise, unless the complainant further shews that someone not competent as a juror had been summoned or that someone competent as a juror had been left off the jury list by reason of the unauthorized revision. [O'Connell v. The Queen, 11 Cl. & F. 155; R. v. Burke, 10 Cox. C.C. 519, referred to; and see Cr. Code, sec. 1011.]

Rex v. Morrow, 24 Can. Cr. Cas. 310.

(§ II A-52)—CHALLENGE TO ARRAY—DEMURRER.

The opposite party may demur to a challenge of the array of petit jurors on the ground that the matter relied upon is not in law a ground of challenge.

Rex v. Morrow, 24 Can. Cr. Cas. 310.

B. QUALIFICATION; COMPETENCY.

(§ II B-55)—PREPARATION OF JURY LIST.

It is not the insertion of a name in the list of jurors or jury register which establishes the qualification of a juror in the province of Quebec (R.S. Que., art. 3405 et seq., and Cr. Code, sec. 921), but the entry of the name in the municipal valuation roll (R.S.Q., art. 3406) with mention of the requisite property or rental valuation.

Rex v. Morrow, 24 Can. Cr. Cas. 310.

(§ II B-55)—DISCHARGE OF JURY AND EMPANELLING FRESH JURY.

Where, on the trial of a capital charge, the jury were not kept together on an adjournment over night, as directed by Code, sec. 945, whereupon the trial Judge discharged the jury and empanelled a fresh jury, before which the trial was commenced de novo, there is no duty upon the trial Judge, on his own initiative, to exclude all the twelve jurors sworn on the first day from the second jury; and the circumstance

that eight of the first jury before which testimony had been given were called and sworn on the second jury without challenge does not raise a presumption of "substantial wrong or miscarriage" to found an order for a new trial. [R. v. Theriault, 2 Can. Cr. Cas. 444; R. v. Sonyer, 2 Can. Cr. Cas. 501; R. v. Long, 5 Can. Cr. Cas. 493; R. v. Lawrence, 25 Times L.R. 374, referred to.]

Rex v. Luparello, 22 D.L.R. 344, 25 Man. L.R. 233, 24 Can. Cr. Cas. 24, 8 W.W.R. 89, 30 W.L.R. 777.

III. Number.

IV. Special Jury.

(See previous Annual Digests.)

V. Verdict; setting aside.

(§ V-90) — EXCESSIVENESS — WHEN UNREASONABLE.

Although the amount of the general damages awarded by the jury's verdict in a railway accident case may seem to the Appellate Court to be very high, such is not a ground for setting aside the verdict and granting a new trial unless the Court finds that the verdict was unreasonable and almost perverse. [Cox v. English, [1905] A.C. 168, 170; Pickering v. G.T.P. R. Co., 50 Can. S.C.R. 393; Pickering v. G.T.P. R. Co., 24 Man. L.R. 544, applied; Johnston v. G.W.R. Co., [1904] 2 K.B. 250; Toronto R. Co. v. King, [1908] A.C. 260, 261, referred to.]

Houghton v. C.N.R. Co., 21 D.L.R. 295, 25 Man. L.R. 311, 8 W.W.R. 254.

VI. Extra powers conferred on jury by agreement of parties.

(See previous Annual Digests.)

JUSTICE OF THE PEACE.

I. IN GENERAL; APPOINTMENT.

II. LIABILITIES.

III. JURISDICTION; PROCEDURE.

IV. REVIEW; APPEAL.

Liability for false imprisonment, see Arrest; False Imprisonment.

Review of proceedings, see Certiorari.

Jurisdiction in preliminary hearings, see Summary Conviction.

Annotation.

Order for further detention on quashing conviction: 25 D.L.R. 649.

I. In general; appointment.

II. Liabilities.

(See previous Annual Digests.)

III. Jurisdiction; procedure.

(§ III-12) — TERRITORIAL JURISDICTION — CASES NEAR BOUNDARY.

Where an offence has been committed within 500 yards of the boundary between

two magisterial jurisdictions, Cr. Code, sec. 584 (b), will not enable the prosecutor to lay it in one jurisdiction and try it in another; he may both lay and try the offence in either jurisdiction. [R. v. Mitchell, 2 Q.B. 638, 2 G. & D. 274, followed.]

Rex v. Jack, 25 D.L.R. 700, 24 Can. Cr. Cas. 385, 49 N.S.R. 328.

(§ III—12)—**ASSAULT OCCASIONING ACTUAL BODILY HARM — CERTIORARI — PERSON AGGRIEVED.**

Justices of the Peace have no jurisdiction under Part XVI to hear a charge of committing an assault occasioning actual bodily harm, contrary to sec. 295 of the Cr. Code, inasmuch as the jurisdiction given to magistrates under sec. 773 is a statutory one, and cannot be extended by implication. [R. v. Sharpe, 18 Can. Cr. Cas. 132, preferred to R. v. Hostetter, 7 Can. Cr. Cas. 221.] A person who has laid a charge as described supra is a person aggrieved by the action of the magistrates so as to be entitled to have the proceedings brought up for review before the Supreme Court.

Rex v. Law, 9 W.W.R. 1075, 25 Can. Cr. Cas.

(§ III—13)—**JURISDICTION OF FIRST AND SECOND JUSTICE.**

Under a statutory provision limiting a Justice's jurisdiction in any particular case to the first Justice having possession and cognizance of the fact, but with a proviso that at such Justice's request any other Justice may at the first Justice's request "take part in" the case, a request to the second Justice may be implied from the conduct of the Justice who received the information, and in view of Cr. Code, sec. 1120, such request will be implied and the conviction upheld where both the Justice receiving the information and another sat at the hearing, but because of objection raised by the family of the accused to the first Justice acting, he voluntarily refrained from trying the case. [R. v. Cruikshanks, 16 D.L.R. 536, 23 Can. Cr. Cas. 23, followed; R. v. Ackers (No. 3), 16 Can. Cr. Cas. 222, and R. v. McGregor, 2 Can. Cr. Cas. 410, referred to.]

Rex v. Tally, 21 D.L.R. 651, 23 Can. Cr. Cas. 449, 8 A.L.R. 453, 7 W.W.R. 1178, 30 W.L.R. 396.

(§ III—13)—**TEMPERANCE ACT.**

Two Justices of the Peace appointed for the entire county and holding a session at the police office established in an incorporated town within the county under the Towns Incorporation Act, N.S., have concurrent jurisdiction with the stipendiary magistrate of the town to try a charge of selling intoxicating liquor in contravention of the Nova Scotia Temperance Act, 1910. [R. v. Giovanetti, 5 Can. Cr. Cas. 157, 34 N.S.R. 505, referred to.]

Rex v. Coady, 23 D.L.R. 278, 23 Can. Cr. Cas. 434.

IV. Review; appeal.

(See previous Annual Digests.)

JUVENILE DELINQUENTS.

See Infants.

KNOWLEDGE.

Of owner of animal of vicious disposition, see Animals.

Of rights of third person in note taken by assignment, see Bills and Notes.

Of defective condition of highway, see Highways.

Effect of servant's knowledge of defect or danger, see Master and Servant, II.

As question for jury, see Trial.

As between principal and agent, see Principal and Agent.

In dealings with brokers, see Brokers.

As to insurance applications, see Insurance.

As affecting liability generally, see Estoppel; Negligence.

LABOUR.

In general, see Master and Servant.

Sunday labour, see Sunday.

LACHES.

Estoppel by, see Estoppel.

In seeking relief from judgment, see Judgment, VII.

To bar action, see Limitation of Actions.

LAND CONTRACT.

Rights and liabilities under, see Vendor and Purchaser; Land Titles.

Nature and requisites of, see Contracts.

LANDLORD AND TENANT.

I. CREATION AND EXISTENCE OF RELATION.

II. LEASES.

A. In general.

B. Covenants.

C. Terms; holding over; renewal.

D. Termination; forfeiture.

E. Assignment; sub-letting.

III. RIGHTS AND LIABILITIES OF PARTIES.

A. In general.

B. As to fixtures and property on premises.

C. Liability of landlord for defective or dangerous premises.

D. As to rent.

E. Re-entry; recovery of possession.

Adverse possession of property held under lease, see Adverse Possession.

Statute of Frauds relating to leases, see Contracts.

Of infant's property, see Infants.

For oil or gas, see Mines and Minerals, II.

Damages arising out of relationship, see Damages, III.

Rights of landlord as to tenant's fixtures, see Fixtures.

As to creation of relation of landlord and tenant by stipulation in contract of sale, see Vendor and Purchaser; by mortgage, see Mortgage.

As to compensation in expropriation, see Eminent Domain.

Rent, distress for, against insolvent, see Assignment for Creditors; Corporations and Companies, VI. F.

Annotations.

Forfeiture of lease; waiver: 10 D.L.R. 603.
Lease; covenants for renewal: 3 D.L.R. 12.

Lease; covenant in restriction of use of property: 11 D.L.R. 40.

Municipal regulations and license laws as affecting the tenancy; Quebec Civil Code: 1 D.L.R. 219.

I. Creation and existence of relation.

(§ I-1)—PERMITTING GRATUITOUS USE OF GARAGE TO INCREASE PATRONAGE.

Where the owners of a garage allow mechanics to occupy for an indefinite time a part of the premises on consideration that they shall have a repair shop nearby, and also with the intention that the latter shall do their best to induce their own customers to patronize the garage in preference to any other, there is not between the parties a contract of lease, but a contract of gratuitous loan or an indefinite contract by which the mechanics undertake, in consideration of the occupation of the premises, to favour the garage. In such case there is no right to bring an action for rent, but it could only be for damages in consequence of failure to carry out the conditions of the contract.

Simard v. Rousseau, 47 Que. S.C. 197.

II. Leases.

A. IN GENERAL.

(§ II A-5)—RENT PAYABLE WITH GOODS OR WORK DONE.

In order to constitute a valid lease, it is not necessary that a rent payable in money should be agreed upon, but the rent can be represented by something which is the equivalent of money, such as work done by the lessee or even payment in goods, but in such a case it is necessary that the equivalent should consist of some definite thing, and not merely of an expectation that may depend upon the will of persons other than those who may occupy the premises.

Simard v. Rousseau, 47 Que. S.C. 197.

(§ II A-5)—LEASE TO TWO TENANTS—OMISSION OF CLAUSE PROVIDING THAT TENANTS SHOULD PAY TAXES—AGREEMENT BY ONE TENANT TO PAY TAXES—ABSENCE OF KNOWLEDGE BY THE OTHER—STATUTORY RIGHT TO DEDUCT TAXES FROM RENT—PAYMENT OF TAXES—CONSTRUCTION OF LEASE—EVIDENCE—INTERPRETATION ACT.

Tyrrell v. Verral, 8 O.W.N. 114.

B. COVENANTS.

(§ II B 1-10)—OPTION TO PURCHASE—RIGHTS OF LESSEE.

Mere written notice to the lessee to exer-

cise his option, without particularizing the terms and conditions of the sale, is not a sufficient compliance with a provision in a lease whereby the lessee is given an option to purchase the property during the term of the lease, and that in the event of a proposed sale to any other person at whatsoever price, the lessor should notify the lessee to enable him, by preference, to exercise his option to purchase; and the rights of such lessee, where the lease is registered, will continue to subsist, even after a subsequent sale of the premises, during the currency of the lease. [Payette and Quevillon v. St. Denis, 23 Que. K.B. 436, reversed.]

St. Denis v. Quevillon, 25 D.L.R. 144, 51 Can. S.C.R. 603.

(§ II B 1-10)—AS TO RETURN OF UNMATURED NOTES—EXTENT OF LESSOR'S RIGHT OF RECOVERY.

A lease providing that, on default of payment of any of the notes given as consideration of the contract, the lessor could re-take possession of the property, and that the lessee would lose all that he had paid to the lessor, and that the lessor "should return the notes unmatured at the time of their maturity, that is to say, that the lessor would only be obliged to retire them and return them to the lessee at the time of their maturity," gives to the lessor a right of action against the lessee to recover the amount of the notes due at such time, the amount of which would represent the value of the enjoyment of possession of the restaurant during the running of the lease; and in such case the lessor need only deliver up the notes not yet due at the time of the re-taking possession.

Richards v. Oceau, 47 Que. S.C. 259.

(§ II B 1-14)—LEASE—COVENANT AGAINST ASSIGNMENT.

A clause in a lease of a licensed restaurant that in case the lessee wishes to sell or transfer his establishment he can only do so with the consent of the lessor, is an absolute prohibition against transfer of the lease, and the lessor may refuse his consent without giving any reasons.

Rosconi v. Péladeau, 48 Que. S.C. 356.

(§ II B 1-14)—COVENANT AGAINST ASSIGNMENT—ASSIGNMENT BY WAY OF SECURITY—RE-ASSIGNMENT.

Where the assignees of a lease by way of collateral security are prepared to release their debt and abandon their security, a re-assignment by them without consent is not a breach of a covenant not to assign or sublet without consent.

Fordham v. Commonwealth Trust Co., 8 W.W.R. 164.

(§ II B 2-15)—IMPLIED COVENANT TO FURNISH HEAT.

A lease of a steam-heated apartment carries with it an implied collateral promise to supply adequate heat. [Hamlin v. Wood, [1891] 2 K.B. 488; Ex p. Ford, [1885] 16 Q.B.D. 305; Lamb v. Evans, [1893] 1 Ch.

218; *De Lasalle v. Guildford*, [1901] 2 K.B. 215, applied.]

Brymer v. Thompson, 23 D.L.R. 840, 34 O.L.R. 194, 8 O.W.N. 527.

[Affirmed in 25 D.L.R. 831, 34 O.L.R. 543, 9 O.W.N. 114.]

C. TERMS; HOLDING OVER; RENEWAL.

(§ II C—21)—YEARLY TENANCY—HOLDING OVER—CORPORATION TENANT.

Where a tenant for years under a valid lease continues in possession after the expiration of the term, and pays the monthly rent reserved in the lease, a tenancy from year to year is thereby established, notwithstanding the fact that the tenant happens to be a corporation. [*Finlay v. Bristol & Exeter R. Co.*, 7 Ex. 409; *Garland Mfg. Co. v. Northumberland Paper, etc., Co.*, 31 O.R. 40, distinguished; *Doe d. Pennington v. Taniere*, 12 Q.B. 998, followed.]

Young v. Bank of Nova Scotia, 23 D.L.R. 854, 34 O.L.R. 176, 8 O.W.N. 505.

(§ II C—23)—TENANCY AT WILL—WHAT CONSTITUTES.

The occupation of land under a verbal agreement to pay the taxes thereon as rent until a purchaser is found constitutes a tenancy at will.

East v. Clarke, 23 D.L.R. 74, 33 O.L.R. 624, 8 O.W.N. 342.

(§ II C—24)—YEARLY LEASE—COVENANT FOR RENEWAL.

A lease for one year contained the following covenant: "That at the option of the lessee, the term hereby demised shall be renewed for a further term of one year, and so on from year to year at a like rental and on similar terms:—Held, that the existence in fact of a desire for the further lease is all that is essential, and that desire may be indicated by conduct and circumstances, and no notice is necessary. [*Brewer v. Conger*, 27 O.A.R. 10, followed.] Held, further, that a covenant for renewal under the same covenants does not include the covenant to renew, but that it means only a second term, not a perpetuity of lease, and after the second term, the lessee remains on only as tenant from year to year. [*Britton v. Foote*, 2 Bro. C.C. 636, and *Russell v. Darwin*, 2 Bro. C.C. (n) 689, followed.]

Hoadley v. Bayntun, 31 W.L.R. 751.

(§ II C—24)—RENEWAL—RENT—VALUATION OF PREMISES—ARBITRATION—EVIDENCE—POSSIBILITY OF PUTTING IN RAILWAY SIDING—ADMISSIBILITY.

Re Toronto General Hospital Trustees and Sabiston, 9 O.W.N. 75.

D. TERMINATION; FORFEITURE.

(§ II D—30)—UNAUTHORIZED ASSIGNMENT OF LEASE—OBJECTIONABLE BUSINESS.

If a valid and binding assignment of the term is made without the lessor's consent being asked for, although the lease contains a covenant that the lessee "will not without

leave assign or sublet, the lessor undertaking that his consent will not be arbitrarily withheld," the effect is to enable the lessor to forfeit the lease and to repossess the premises; but if, before a valid and binding assignment is made (ex gr., the delivery of an assignment held in escrow pending the negotiations to obtain the consent), the consent of the lessors is requested, the refusal of such consent can only be justified if the proposed assignee or the business he is to carry on is found to be objectionable. [*Bates v. Donaldson*, [1896] 2 Q.B. 241; *Burrow v. Isaacs*, [1891] 1 Q.B. 417; *Eastern Telegraph v. Dent*, [1899] 1 Q.B. 835, referred to.]

McCallum, Hill & Co. v. Imperial Bank, 22 D.L.R. 203, 7 S.L.R. 333, 7 W.W.R. 981, 30 W.L.R. 343.

(§ II D—30)—LESSOR'S FAILURE TO IMPROVE—FORFEITURE OF LIQUOR LICENSE.

The forfeiture of a liquor license resulting from the failure of a lessor to improve the leased premises in accordance with a municipal regulation, as required by a covenant in the lease, does not, in the absence of a provision to that effect express or implied, put an end to the lease so as to relieve the lessee from liability for rent thereunder.

Dana & Fullerton v. Vancouver Breweries, 25 D.L.R. 508, 21 B.C.R. 19.

[Affirmed in *Vancouver Breweries v. Dana*, 52 Can. S.C.R. 134, 26 D.L.R., 9 W.W.R. 1018.]

(§ II D—30)—PROVISO FOR TERMINATION—NOTICE—ENFORCEMENT—SALE OF LAND—BONA FIDES—PARTIES—ACTION FOR POSSESSION BROUGHT BY LESSOR AND VENDEE AGAINST ADMINISTRATRIX OF LESSEE—INFANT BENEFICIARY—COSTS.

Teasdale v. Dwyer, 9 O.W.N. 330.

(§ II D—30)—ASSERTION OF RIGHT OF WAY THROUGH DEMISED PREMISES—EVICTION—TERMINATION OF LEASE—TRESPASS—DESTRUCTION OF BARRIER TO USE OF WAY—ACTION FOR RENT—DEFENCE—COUNTERCLAIM.

Purvis v. Shepherd, 8 O.W.N. 578.

(§ II D—31)—SURRENDER BY OPERATION OF LAW—ACCEPTANCE OF NEW TENANT.

Held, on the facts and the judgments of the lower Courts, that there had been a surrender of a lease by act and operation of law, via acceptance of a new tenant. (Per *Curiam*, *Idington and Duff, JJ.*, dissentientibus.)

McKeown v. Lechtzier, 7 W.W.R. 1394.

(§ II D—32)—LESSOR'S FAILURE TO LAY FLOORING WITHIN STIPULATED TIME.

Lessees of a warehouse who take possession thereof under a written lease and a subsequent agreement that the lessor is to place surface flooring within a certain time are not entitled to a rescission of the lease because of the lessor's failure to place the flooring within the time limited or within a reasonable time thereafter. The lessees' only remedy is damages for breach of the agreement.

Canadian Equip. & Supply Co. v. Christie, 8 A.L.R. 359.

(§ II D—33)—MONTHLY TENANCY—NOTICE OF TERMINATION—SUFFICIENCY.

Defendant leased from the plaintiff certain premises at a rental of \$50 per month, payable in advance on the first day of each month. On October 23, the defendant gave the plaintiff notice that he would vacate on November 15, to which date the defendant paid rent. He quitted the premises on November 14, but did not return the key to the plaintiff till about December 2. The plaintiff sued for two months' rent, and the action having been dismissed the plaintiff appealed. On appeal:—Held, that the length of notice to quit in the case of weekly and monthly tenancies has not been fixed precisely, but the general principle is that in the absence of special stipulation reasonable notice must be given, and that a notice equal in length to the period of the tenancy is sufficient. That a notice to quit must be given so that it will expire on and with the last day of the period of the tenancy.

Baker v. McCurdy, 7 S.L.R. 340.

(§ II D—33)—CANCELLATION BECAUSE IMMORALITY.

The lease of a house for purposes of prostitution is void. It is no defence to an action for cancellation of such lease to allege that the owner herself keeps a disorderly house and that she wishes to retake possession of her immovable with the intention of occupying it for similar purposes.

Paul v. Cousineau, 24 Que. K.B. 264.

E. ASSIGNMENT; SUB-LETTING.

(§ II E—35)—COVENANT NOT TO ASSIGN—BREACH.

A lessee's covenant not to assign without leave is broken only by a legal assignment for the entire residue of the term. [Gentle v. Faulkner, [1900] 2 Q.B. 267, followed.]

McCallum, Hill & Co. v. Imperial Bank, 22 D.L.R. 203, 7 S.L.R. 333, 7 W.W.R. 981, 30 W.L.R. 343.

(§ II E—35)—LESSOR'S COVENANT NOT ARBITRARILY TO WITHHOLD CONSENT TO ASSIGN.

The effect of a clause in a lease that the lessor will not arbitrarily withhold his consent to an assignment of the term which the lessee has covenanted not to make without his leave is not to impose an obligation on the lessor to give his consent, but in case it is unreasonably withheld to release the lessee from the obligation of the covenant and to enable him to assign without the lessor's consent. [Andrew v. Bridgeman, [1907] 1 K.B. 198; West v. Gwynne, [1911] 2 Ch. 1, followed.]

McCallum, Hill & Co. v. Imperial Bank, 22 D.L.R. 203, 7 S.L.R. 333, 7 W.W.R. 981, 30 W.L.R. 343.

(§ II E—36)—COVENANT AGAINST ASSIGNMENT—MAKING LEASE PARTNERSHIP PROPERTY.

A provision in a partnership agreement

whereby one partner agrees to assign to the other partner an interest in a lease to be used for the business of the partnership, in consideration of his share of contribution, operates as a mere equitable assignment, and does not constitute a breach of a covenant in the lease against assignment as a ground of forfeiture of the lease.

Herschorn v. St. Mary's Young Men's Society, 25 D.L.R. 102.

(§ II E—36)—WHAT PASSES TO ASSIGNEE—GUARANTY OF RENT.

An assignment by a lessor, of all the rights, powers, title and interest in a lease, with all the benefit and advantage to be derived therefrom, carries with it the benefit of a guaranty contained in the lease for the payment of the rent by the lessee.

West v. Shun, 24 D.L.R. 813, 8 S.L.R. 243, 9 W.W.R. 644, 32 W.L.R. 961.

(§ II E—36)—ASSIGNMENT WITHOUT LEAVE—UNREASONABLE REFUSAL OF LESSOR TO CONSENT—RIGHT TO ASSIGN—DECLARATION—DAMAGES—COSTS.

Childs v. King, 8 O.W.N. 511.

(§ II E—37)—LESSEE'S LIABILITY FOR DAMAGES RESULTING FROM UNAUTHORIZED SUB-LEASE—CHINESE LAUNDRY—PRIOR JUDGMENT FOR RESILIATION.

A lessee who sub-lets a house, notwithstanding sub-leasing has been forbidden, to a non-desirable person such as a Chinaman keeping a laundry, is liable for the damages caused by the proximity of such person. Thus he may be condemned to pay to the lessor the loss of rent from a neighbouring lessee and the attorney's costs in the action to resiliate the lease of the latter, his own expenses of moving and the cost of disinfection. These damages can neither be considered too remote nor as unforeseen. The lessee in such case cannot set up against such demand for damages, as chose jugée, a prior judgment between the same parties granting to the lessor the resiliation of the lease with damages for the balance of the rent up to the end of the year and a reservation for the future rent.

Mayer v. David, 47 Que. S.C. 516.

III. Rights and liabilities of parties.

A. IN GENERAL.

(§ III A—41)—BURSTING OF HOT-WATER PIPES—LIABILITY OF LESSEE.

A lessee of a house is not responsible for the damages caused by the bursting of the hot-water pipes on account of the frost, when it is caused by the defects in the heating apparatus and in the construction of the house.

Davidson v. King, 48 Que. S.C. 392.

(§ III A—43)—PROTECTION OF DRAINS TO PREVENT FLOODING—DUTY OF TENANT.

It is not a defect in construction to protect by a cage, the opening of a drain soil pipe on the roof of a building, even when the neglect to keep it free and clear from refuse would

cause the flooding of the roof. It is the duty of the tenant to attend to this clearing.

Cooper v. Holden Co., 48 Que. S.C. 455.

(§ III A-47)—BUILDING CONTRACT—LIABILITY OF LESSEE.

While a lessee may not be personally liable on a building contract authorized by his lessor, the personal liability of the lessee will nevertheless attach to orders for work personally given by him. [Re International Contract Co., L.R. 6 Ch. 525, referred to.]

Orr v. Robertson, 23 D.L.R. 17, 34 O.L.R. 147, 8 O.W.N. 471.

[Distinguished in Cut Rate Plate Glass Co. v. Solodinski, 25 D.L.R. 533.]

(§ III A-47)—PAYMENT FOR BUILDINGS—MODE OF VALUATION.

Covenants contained in separate leases on adjoining lots providing the payment for the improvements thereon by the lessor upon the expiration of each lease, in an amount ascertained by valuers, does not authorize a valuation of the improvements on the several lots as an entirety, but the value must be ascertained of the improvements on each lot separately. [Campbell v. Irwin, 32 O.L.R. 48, reversed.]

Irwin v. Campbell, 23 D.L.R. 279, 51 Can. S.C.R. 358.

C. LIABILITY OF LANDLORD FOR DEFECTIVE OR DANGEROUS PREMISES.

(§ III C 2-73)—DEFECTIVE WATER SYSTEM—LEAKAGE.

Leakages of water occurring frequently through the ceiling from the upper to the lower floors of a building which was occupied by various tenants, but over which the proprietors had sole control of the construction and maintenance of the water system, may raise a presumption that there was a defect in maintenance for which the proprietors may be held liable in damages to their tenants, although the place was not rendered untenable.

Alberta Loan & Investment Co. v. Ber-
cuson, 21 D.L.R. 385.

(§ III C 2-80)—DAMAGE CAUSED BY RODENTS—RESILIATION OF LEASE.

The owner of a house leased as a private residence is liable for damages caused to the lessee by the rats which infest the leased premises, and the lease can be resiliated if the house has become uninhabitable on this account, provided that the lessee is not in fault and has made every effort to destroy or banish them.

Bigoness v. Bouchard, 48 Que. S.C. 406.

D. AS TO RENT.

(§ III D 1-99)—INCOMPLETE LEASE—SURRENDER OF POSSESSION.

If the agreement for a lease is one of which specific performance will be ordered, the tenant holding under such agreement is not merely a tenant from year to year, but stands in the same position as to liability as

if the lease had been executed; so where the tenant had not been given possession of all of the premises in pursuance of the agreement and the landlord would in consequence be disentitled to specific performance, the tenant may repudiate the agreement, and, on doing so promptly and vacating the premises, will not be liable for rent except for the time of his actual occupation. [Lowther v. Heaven, 41 Ch.D. 248, referred to.]

Crichton's Limited v. Green, 23 D.L.R. 345, 8 S.L.R. 79, 8 W.W.R. 224, 30 W.L.R. 793.

(§ III D 1-99)—APPORTIONMENT—RE-TAKING POSSESSION.

The statute R.S.O. 1914, ch. 156, sec. 4, declaring all rent to accrue from day to day, and to be so apportionable has changed the common law rule by which rent was not due in respect of an intermediate broken period; and under the statute the landlord may recover rent up to the time when he re-entered on his acceptance of the tenant's surrender when the latter gave up possession and gave the landlord notice to that effect. [Hartcup v. Bell, Cab. & El. 19, and Elvidge v. Meldon, 24 L.R. Ir. 91, followed; Hall v. Burgess, 5 B. & C. 332, distinguished.]

Crozier v. Trevarton, 22 D.L.R. 199, 32 O.L.R. 79, 7 O.W.N. 111.

(§ III D 1-99)—NOTICE OF RE-LEASE TO HOLD LESSEE LIABLE FOR RENT.

Where the landlord is notified by his tenant that the latter has given up the demised premises, and the landlord desires to preserve his claim against the tenant under the lease and at the same time re-let, he should notify the tenant that he is re-letting on such tenant's account. [Walls v. Atcheson, 3 Bing. 462, referred to.]

Crozier v. Trevarton, 22 D.L.R. 199, 32 O.L.R. 79, 7 O.W.N. 111.

(§ III D 2-105)—PRIORITIES—EXECUTION CREDITORS—ACCELERATION CLAUSE.

Under the statute 8 Anne, ch. 14, the rent for which the landlord is granted priority over execution creditors must not only be due, but must be in arrear at the time of the sheriff's seizure; an acceleration clause in the lease whereby the current year's rent should immediately become "due and payable" and the term become forfeited on the lessee's goods on the demised premises being seized or taken in execution, does not give this priority for the accelerated rent as it would not be in arrear under the statute of Anne until the day following the day when it became due. [Child v. Edwards, [1909] 2 K.B. 753, referred to.]

Sawyer-Massey Co. v. White, 21 D.L.R. 454, 8 S.L.R. 108, 8 W.W.R. 493, 30 W.L.R. 873.

(§ III D 2-105)—PRIORITIES—CROP-SHARING LEASE—MORTGAGEE AND EXECUTION CREDITORS.

Where a mortgage of farm land gives to the mortgagee the right on default of pay-

ment to enter into possession, to collect the rents and profits and to make a lease of the land at such rent as the mortgagee thinks proper, it is competent for the mortgagee to enter into possession and to make a crop-sharing lease to the mortgagor who thereby waives service of a formal notice under sec. 93 of the Land Titles Act, Sask., and the share of the grain to which the lessor is entitled under such lease is a valid preferential claim for rent under the Landlord and Tenant Act, 8 Anne, ch. 14, as against execution creditors of the tenant mortgagor. [Foster v. Moss, 4 S.L.R. 421, applied; Smith v. National Trust Co., 1 D.L.R. 698, 45 Can. S.C.R. 618, distinguished.]

Rollefson Bros. v. Olson, 21 D.L.R. 671, 8 S.L.R. 143, 8 W.W.R. 481, 31 W.L.R. 157.

(§ III D 2—105)—TENANT'S ASSIGNMENT FOR CREDITORS—STATUTORY LIEN OF LANDLORD—LIMITATIONS.

Under the Landlord and Tenant Act, R.S.O. 1914, ch. 155, sec. 38, the landlord, in case of an assignment by the tenant for the benefit of creditors, has a statutory lien upon goods available for distress, independent of actual distress or possession, for the amount of rent due, but limited to the period of one year next preceding and for the three months following the assignment. [Lazier v. Henderson, 29 Ont. R. 673; Tew v. Toronto Savings and Loan Co., 30 Ont. R. 76, followed.]

Re Fashion Shop, 21 D.L.R. 478, 33 O.L.R. 253, 8 O.W.N. 71.

(§ III D 2—105)—LIEN OF LESSOR.

A lessee who agrees by his lease not to remove from the leased premises the moveables which secure the past or future rent, cannot remove a portion of his moveables even when he apparently leaves enough to secure the lessor.

Vanier v. Bonenfant, 48 Que. S.C. 363.

(§ III D 2—105)—LIEN FOR RENT—INSOLVENCY.

The lien of the lessor is a real right of pledge, a *ius in re* on the effects placed in the house, whether under a lease in authentic form, a lease *sous seign prive*, a verbal lease, or one expressed or implied. It follows that if the lessee fails to perform any of his obligations, even though no rent should be due, the lessor can seize the effects, in the case of insolvency, when the lessee loses the benefit of the term. Between the lessor and lessee, art. 2005 C.C., respecting the extent of the lien, does not apply; and when it is agreed in a lease made to a stock company that on default in paying the rent or fulfilling certain other obligations the lessor will have the right to claim the balance of the rent up to the end of the term he can claim by privilege all the balance of rent agreed for if the company is put in liquidation.

Paré v. Warwick Pants Manuf. Co., 47 Que. S.C. 60.

(§ III D 2—105) — SAISIE-GAGERIE — PRIORITIES—INTERVENTION.

When a lessor has taken a *saisie-gagerie* against his lessee for rent, and subsequently a third party owner of the effects seized causes them to be revendicated and a new guardian appointed, the lessor himself, and not only the first guardian, has a right to intervene in this latter cause and demand that the moveables seized be returned to him to satisfy his privileged claim.

Sonenblum v. Insenga, 47 Que. S.C. 111.

(§ III D 2—105)—ASSIGNMENT BY TENANT FOR BENEFIT OF CREDITORS—LANDLORD'S CLAIM FOR FUTURE RENT—CLAIMS OF CREDITORS—DISTRIBUTION OF INSOLVENT ESTATE — PRIORITIES — LANDLORD AND TENANT ACT, R.S.O. 1914, CH. 155, SEC. 38 — DAMAGES — COSTS — INJUNCTION — JUDGMENT.

Alderson v. Watson, 9 O.W.N. 90.

(§ III D 3—110) — DISTRESS — EFFECT OF NON-COMPLIANCE WITH STATUTE.

Under the Distress Act, R.S.M. 1913, ch. 55, a party distraining is to give a copy of demand and of all costs and charges of the distress to the person whose goods are seized, but failure to comply with this statutory provision does not make the distress illegal, although it may render irregular the sale of the goods distrained. [Vaughan v. Building and Loan Assn., 6 Man. L.R. 289, referred to.]

McDermott v. Fraser, 23 D.L.R. 430, 25 Man. L.R. 298, 8 W.W.R. 196.

(§ III D 3—110) — ILLEGAL DISTRESS — LIABILITY OF LANDLORD AND BAILIFF.

An action for illegal distress should be brought against the bailiff who committed the act complained of, and not against the landlord, unless it be shewn that the latter authorized the wrongful act or sanctioned and ratified it after it came to his knowledge, or unless he chooses to take upon himself without inquiry the risk of any irregularity which the bailiff may have committed and to adopt all his acts. [Haseler v. LeMoyné, 5 C.B.N.S. 530, 28 L.J.C.P. 103, referred to.]

Zarr v. Confederation Life, 22 D.L.R. 97, 8 S.L.R. 159, 31 W.L.R. 18, 8 W.W.R. 365.

(§ III D 3—110)—DISTRESS FOR RENT—EXCESSIVE SEIZURE—LIABILITY OF LANDLORD.

Seigman v. Miller Spencer & Co., 25 D.L.R. 805, 9 W.W.R. 729.

(§ III D 3—110) — DISTRESS FOR RENT — RIGHTS OF CHATTEL MORTGAGEE.

Re Calgary Brewing & Malting Co., 25 D.L.R. 859, 9 W.W.R. 563, 33 W.L.R. 68.

(§ III D 3—110) — DISTRESS — PROPERTY OF WIFE—NOTICE.

A wife separated as to property can properly give to a lessor the notice mentioned in art. 1622, C.C., when she is the owner of the effects of a house rented by her husband and occupied by both.

Royal Trust Co. v. Keating, 48 Que. S.C. 516.

(§ III D 3—110)—LOSS OF DISTRESS—SALE UNDER EXECUTION.

Held, the property having been sold, there was nothing in the sheriff's hands upon which the distress could be made.

Douglas v. Vivian, 7 S.L.R. 80.

(§ III D 3—110) — DISTRESS — EFFECT OF WINDING-UP RESOLUTION.

A landlord is not deprived of his right to distrain nor of his right to priority upon the goods of a tenant company by a winding-up resolution.

Re Calgary Furniture Store, 9 W.W.R. 1.

LAND TITLES (Torrens system).

- I. GENERALLY.
- II. FIRST REGISTRATION.
- III. TRANSFERS; MORTGAGES, LEASES, ETC.
- IV. CAUTIONS; CAVEATS AND ADVERSE CLAIMS.
- V. LAND CERTIFICATES; TITLES.
- VI. PLANS.
- VII. PROCEDURE.
- VIII. ASSURANCE FUND.

Crown patents, see Public Lands.

Construction of deeds, see Deeds.

Possessory titles, see Adverse Possession.

As to mines and minerals, see Mines and Minerals.

As affecting vendor and purchaser, see Vendor and Purchaser.

Registration of mechanic's liens, see Mechanics' Liens.

Registration laws in general, see Records and Registry.

As affected by moratorium, see Moratorium.

Annotations.

(Torrens system); caveat; parties entitled to file caveats; "caveatable interests": 7 D.L.R. 675.

Caveats; priorities acquired by filing: 14 D.L.R. 344.

Mortgages; foreclosing mortgage made under Torrens system; jurisdiction: 14 D.L.R. 301.

Interests of vendors and mortgagees affected by moratorium: 22 D.L.R. 865.

I. Generally.

(§ I—10)—DUTIES OF REGISTRAR—CERTIFICATES OF TITLE—FAILURE TO ENDORSE EXECUTIONS—DISSIMILARITY IN NAMES.

The duties of the registrar of land titles in matters of registration are not merely ministerial, but are judicial to a limited extent; in the exercise of his discretion as to the identity of persons from a substantial similarity in names he must confine himself to the spirit of the statute in accordance with a reasonable protection of creditors' interests; and the fact that a writ of execution is designated by the initial letter of the Christian name and the title registered in the full name, but the surnames and addresses being alike, does not justify an assumption as to a dissimilarity of persons so as to relieve him from liability for his failure to

endorse upon a certificate of title a memorandum of the writ. [Sievell v. Haultain, 4 S.L.R. 142, distinguished.]

Borbridge v. Borland, 24 D.L.R. 147, 8 S.L.R. 190, 8 W.W.R. 1151, 31 W.L.R. 805.

(§ I—10)—DUTIES OF REGISTRAR—DISCRETION—LEGALITY OF INSTRUMENTS.

The statutory duty of the Registrar of Titles in respect of registration of instruments is not merely ministerial, but carries with it a certain amount of discretion which he may exercise in order to ascertain the legality of instruments, and the apparent right or title of parties seeking their registration. [Manning v. Commissioner, etc., 15 A.C. 195, followed.]

Re Land Registry Act and Shaw, 24 D.L.R. 429, 8 W.W.R. 1270, 32 W.L.R. 85.

II. First registration.

(§ II—20)—SALE OF CLOSED HIGHWAY—REFUSAL TO REGISTER TITLE—INVALID BY-LAW.

The giving of the statutory notice under the Municipal Act, R.S.O. 1914, ch. 192, sec. 475, of intention to close a part of the highway by municipal by-law, is a condition precedent to a valid by-law; and a purchaser from the municipality of the closed portion of the highway in a tract registered under the Land Titles Act, Ont., may be refused registration of his title where the notice published by the municipality was radically defective. [Wannamaker v. Green, 10 Ont. R. 475, referred to.]

Re Rogers, 22 D.L.R. 590, 7 O.W.N. 717.

III. Transfers; mortgages; leases; etc.

(§ III—30)—COAL LEASE—IMPROPER REGISTRATION—SETTING ASIDE.

The registrar has no right under the Land Titles Act (Alta.) to register a mineral lease where the lessor does not appear to be the registered owner, and if so registered, it may be set aside by anyone whose interest in the property is affected.

Greig v. Franco-Canadian Mortgage Co., 23 D.L.R. 860, 9 W.W.R. 22, 32 W.L.R. 280.

(§ III—30)—TRANSFER OF MORTGAGE—APPARENT TITLE—POWER OF ATTORNEY.

An assignment of a mortgage to himself by the donee of a power of attorney, without proof of acquiescence by the donor, does not establish a *prima facie* title, and the registrar of titles will be justified in not receiving such instrument for registration.

Re Land Registry Act and Shaw, 24 D.L.R. 429, 8 W.W.R. 1270, 32 W.L.R. 85.

(§ III—30)—STATEMENT OF CONSIDERATION—POWERS OF REGISTRAR.

There is nothing in the law, common or statutory, which compels a statement of the true consideration to be expressed in a transfer of land or transfer of mortgage any more than there was for the statement of such consideration in the common law indenture of deed, and a registrar cannot refuse registration to an instrument on the

ground that no consideration is stated therein.

Re Registration of Transfer of Mortgage, 9 W.W.R. 491.

(§ III—30)—CONSIDERATION FOR MORTGAGE—SUFFICIENCY.

The consideration "and of the said indebtedness and of the sum of one dollar" is sufficient to satisfy the requirements of the Land Titles Act and the office procedure under said Act, and in making the memorandum of the mortgage the consideration should be stated as one dollar and further consideration. The consideration stated in the abstract should be one dollar and further consideration.

Re Mortgage Consideration, 9 W.W.R. 194.

(§ III—30)—TRANSFER OF HOMESTEAD—AFFIDAVIT—POWERS OF REGISTRAR.

Though transfers of an interest in a homestead must contain the affidavit of the transferor in Form C, yet no duty seems to be cast on the registrar to see that no mortgage is registered unless it is executed in the method provided, and it is very dangerous for the registrar to attempt to apply personal information or knowledge (e.g., as to the marriage of the transferor) which he may have outside of his official records, excepting possibly where this is necessary for the prevention of fraud in the protection of his records.

Re Registration of a Mortgage, 9 W.W.R. 21.

(§ III—30)—ASSIGNMENT FOR CREDITORS—HOMESTEAD—CONSENT OF WIFE.

An assignment for the benefit of creditors is not a transfer of land provided for in sec. 5 of the Homestead Act so as to render it necessary to obtain the signature of the wife of the transferor or an affidavit in Form C in the schedule to the Homestead Act.

Re Assignment for Creditors, 9 W.W.R. 209.

(§ III—30)—POWER OF ATTORNEY—ASSIGNMENT FOR CREDITORS—DISCRETION OF REGISTRAR AS TO SUFFICIENCY.

A power of attorney authorizing the attorney to make an assignment for the benefit of creditors of all the assets of the debtor is a sufficient power of attorney to include in the assignment any land belonging to the debtor, and the registrar has no duty in regard to the determination whether such assignment or the extension agreement containing the power of attorney is void or voidable.

Re Power of Attorney, 9 W.W.R. 180.

(§ III—30)—TRANSFER OF LAND OF ADJUDGED LUNATIC—LETTERS OF GUARDIANSHIP—ORDER OF COURT AUTHORIZING SALE.

The registrar is justified in refusing a transfer of land registered in the name of a person who has legally been declared a lunatic and for whom a guardian has been appointed by the Court, unless the proper order of the Court authorizing the sale and

transfer is produced. Letters of guardianship should be filed in the general register.

Re Roland Polgreen, 7 W.W.R. 1184.

(§ III—31)—MORTGAGE—FORGED TRANSFER—REMEDY—ASSURANCE FUND.

A mortgage taken in good faith and for value from a registered owner upon a forged transfer constitutes a valid charge on the land which will not be set aside at the instance of the true owner in prejudice of the rights of the mortgagee; the remedy of the former is in compensation from the assurance fund under the Act for a sum sufficient to discharge the mortgage. [Gibbs v. Messer, [1891] A.C. 248; Assets Co. v. Mere Roihi, [1905] A.C. 176, considered; Re Adams &c., 20 D.L.R. 293, distinguished.]

Brown v. Broughton, 24 D.L.R. 244, 25 Man. L.R. 489, 8 W.W.R. 889, 31 W.L.R. 583.

(§ III—31)—FORGED TRANSFER—RIGHTS OF SUBSEQUENT TRANSFEREES.

Where a person forges in favour of himself a transfer of lands, no estate or interest is thereby conveyed, and subsequent transferees, not being bona fide purchasers for valuable consideration without notice of the forgery, stand in no better position. [Re Adams & McFarland, 20 D.L.R. 293, 6 W.W.R. 1076, referred to.]

Shetler v. Foshay, 8 S.L.R. 174, 8 W.W.R. 852, 31 W.L.R. 181.

IV. Cautions; caveats and adverse claims.

(§ IV—40)—RESTRICTIVE BUILDING COVENANTS—DISCHARGE OF.

A restrictive covenant as to the use of the property contained in an agreement for the sale of lots stipulating its continuance during the currency of the contract will cease to be effective immediately upon the issue of a transfer to the land on the surrender of the contract, and a caveat thereof lodged at the land titles' office will be discharged. [Re Jamieson Caveat, 10 D.L.R. 490, followed.]

Roaf v. G.T.P. Town & Development Co., 24 D.L.R. 750, 8 S.L.R. 272, 8 W.W.R. 1150, 31 W.L.R. 893.

G.T.P. Development Co. v. Moose Jaw Securities, 24 D.L.R. 752, 31 W.L.R. 892.

(§ IV—40)—CAVEAT BASED ON REGISTERED MECHANICS' LIEN.

A caveat based upon a registered mechanics' lien is an idle instrument within the meaning of the dictum of Prendergast, J., in *In re Ebbing*, 2 Sask. L.R. 167, at pp. 170 and 171, and is not a registrable instrument under sec. 125 of the Land Titles Act.

Re Caveat on Mechanics' Lien, 9 W.W.R. 648.

(§ IV—40)—LIS PENDENS.

There is no authority for the registration of a certificate of lis pendens in the Land Titles Registry, other than Form No. 6 under the Mechanics Lien Act.

Re Lis Pendens, 7 W.W.R. 1217.

(§ IV—40)—SOLICITOR'S LIEN.

A solicitor's lien for professional services

rendered and disbursements advanced in foreclosing a mortgage is insufficient whereon to found a caveat.

Re Registration of a Caveat, 8 W.W.R. 866.

(§ IV—40)—REGISTRATION OF FORECLOSURE ORDER—VALIDITY—SIGNATURE OF JUDGE.

Fitzgerald v. Mayo, 24 D.L.R. 898, 8 S.L.R. 228, 8 W.W.R. 1338, 31 W.L.R. 795.

(§ IV—40)—REGISTRATION OF AGREEMENT EXTENDING TIME FOR PAYMENT OF MONEYS SECURED BY CHARGE—NECESSITY FOR EXECUTION BY OWNERS OF CHARGE—R.S.O. 1914 CH. 126, SEC. 138, RULES 27, 28, 29, 30, 33.

Re Reid and Gooderham, 8 O.W.N. 534.

(§ IV—43)—SPECIFIC PERFORMANCE—NOTICE OF RESCISSION—DATE.

Where the vendor has sued for specific performance of an agreement for sale of lands in Alberta where titles are shewn of record under the Land Titles Act, and he has had a reasonable time to get in and register a title in himself to the lands in question, it is not necessary that the purchaser thereafter giving notice of rescission because of the vendor's lack of a registered title shall fix in such notice a definite date in advance at which the transfer must be forthcoming or he would repudiate. [Halkett v. Dudley, [1907] 1 Ch. 590, distinguished; Krom v. Kaiser, 18 D.L.R. 226, 7 A.L.R. 467, reversed.]

Krom v. Kaiser, 21 D.L.R. 700, 8 A.L.R. 287, 8 W.W.R. 239, 31 W.L.R. 742.

V. Land certificates; titles.

(§ V—50)—TITLE TO CROPS—RIGHTS OF LESSOR UNDER CROPPING LEASE.

A growing crop of wheat, or other product of the soil not produced spontaneously, is a chattel interest which may be claimed against the transferee of the title to the land under the Land Titles Act, Sask., by the tenant or licensee under an agreement made with the transferor for cropping land on shares; if the agreement constituted a lease it is within the exception of sec. 66 of the Land Titles Act, but if not a lease, the person put in possession under the cropping agreement would hold a license with an interest entitling him to go upon the land for the purpose of harvesting the grain and removing same to the elevator in conformity with this agreement, and such interest and parol evidence of notice to the transferee and of the latter's acceptance thereof as a term of his purchase may be shewn notwithstanding the production by the transferee of a certificate of title in which the crop agreement was not mentioned. [Marshall v. Green, 1 C.P.D. 35, applied; Wood v. Lang, 5 U.C.C.P. 204, distinguished.]

Gardner v. Staples, 21 D.L.R. 814, 8 S.L.R. 149, 8 W.W.R. 397, 30 W.L.R. 860.

(§ V—50)—FORGED TRANSFER—CANCELLATION.

A certificate of title procured upon a forged transfer, although *prima facie* valid, may be set aside under sec. 58 of the Real Property Act (Man.), and a new certificate issued to the true owner.

Brown v. Broughton, 24 D.L.R. 244, 25 Man. L.R. 489, 8 W.W.R. 889, 31 W.L.R. 583.

(§ V—50)—EASEMENTS.

A certificate of title should not be issued for an easement, but it should be protected by a memorandum on the certificate relating to the servient tenement, and where the dominant tenement is apparent, also upon the certificate relating thereto.

Re Easements, 8 W.W.R. 171.

(§ V—50)—SUBSEQUENT RESALE BY VENDOR—RIGHT TO POSSESSION.

One L., the owner, sold a quarter section of land to the defendant under agreement, payable by instalments. Subsequently, L., claiming to have cancelled the sale to the defendant because of non-payment of instalments, resold the land to the plaintiff, giving the plaintiff a transfer therefor, which the plaintiff registered and obtained certificate of title. The defendant, between the execution of the transfer and the issue of certificate of title, executed and lodged for registration a caveat which was registered on the same day that the certificate of title issued. The plaintiff caused the registrar to serve on the defendant notice of lapse of caveat unless a Judge's order continuing the same was produced, and no Judge's order being produced the caveat lapsed and was struck off the title. The defendant continued in possession of the land:—Held, that the plaintiff's certificate of title was conclusive evidence that the plaintiff was the owner of the land and was entitled to possession thereof.

Cloutier v. Loiselle, 8 S.L.R. 249, 33 W.L.R. 111, 9 W.W.R. 684.

VI. Plans.

(§ VI—60)—SUBDIVISION PLANS AND SURVEYS.

A plan of subdivision should not be registered without the approval and signature of incumbancers, notwithstanding the Surveys Acts, sec. 14, sub-sec. 7.

Re Registration of Plans, 9 W.W.R. 180.

VII. Procedure.

(§ VII—70)—CAVEATS—APPLICATION TO DISCHARGE—SUMMARY PROCEEDINGS.

An application to discharge a caveat may be proceeded under the Land Titles Act in a summary way if no objection to the proceedings is taken before the Local Master.

Roaf v. G.T.P. Town & Development Co., 24 D.L.R. 750, 8 S.L.R. 272, 8 W.W.R. 1156, 31 W.L.R. 893.

G.T.P. Development Co. v. Moose Jaw Securities, 24 D.L.R. 752, 31 W.L.R. 892.

VIII. Assurance Fund.**(§ VIII—80)—ASSURANCE FEES—NUMBER OF CERTIFICATES OF TITLE.**

Assurance fees should be computed in the same way whether one or more certificates of title are to be issued on the registration of a transfer because these assurance fees are based on the valuation of the land transferred, i.e., on the total valuation of the land contained in the transfer, irrespective of the number of certificates of title to be issued on the registration of such transfer.

Re Assurance Fees, 9 W.W.R. 521.

LANES.

Public lanes, see Highways.

Private lanes and rights of way, see Easements.

LARCENY.

See Theft.

LATERAL SUPPORT.

See Adjoining Owners; Easements; Waters; Buildings.

LEASE.

In general, see Landlord and Tenant.

As to oil or gas lease, see Mines and Minerals.

Of infant's property, see Infants.

Annotation.

Covenants for renewal: 3 D.L.R. 12.

LEGACY.

See Wills; Executors and Administrators.

LEGAL PROFESSION.

See Solicitors.

LEGAL REPRESENTATIVES.

See Executors and Administrators; Solicitors; Guardian and Ward.

LEGISLATURE.

Legislative powers, see Constitutional Law.

Municipal legislation, see Municipal Corporations.

LETTER.

Admissibility in evidence generally, see Evidence.

LETTERS PATENT.

See Patents.

Patents of land, see Public Lands; Mines and Minerals.

LEVY AND SEIZURE.**I. WHAT PROPERTY SUBJECT.**

A. In general.

B. Property in custody of law.

II. MODE AND SUFFICIENCY; RETURN.**III. RIGHTS AND LIABILITIES GROWING OUT OF LEVY.**

A. Of officer levying.

B. Of others.

C. Priorities.

IV. BOND FOR RELEASE OF.

See also Execution; Attachment; Garnishment.

Distress for rent, see Landlord and Tenant.

Distress under mortgage, see Mortgage; Chattel Mortgage; Bills of Sale.

Levy for taxes, see Taxes.

I. What property subject.**A. IN GENERAL.****(§ I A—1)—IMMOVEABLE IN POSSESSION OF DEBTOR.**

An immoveable can be seized only when the judgment debtor is in possession of it or is deemed to be in possession of it *animo domini*.

Vézina v. Lafortune, 48 Que. S.C. 254.

(§ I A—18)—SEIZURE OF CROP—JOINT INTEREST.

A crop cannot be seized under execution as against the rights of a claimant to a share of the crop for money advances.

International Harvester Co. v. Jacobsen, 24 D.L.R. 632, 9 W.W.R. 87, 32 W.L.R. 332.

(§ I A—18)—CROPS OF LESSEE—SEIZURE BY CREDITORS OF LESSOR.

Cotton v. Boyd, 24 D.L.R. 896, 8 S.L.R. 229, 31 W.L.R. 797.

II. Mode and sufficiency; return.

(See previous Annual Digests.)

III. Rights and liabilities growing out of levy.**A. OF OFFICER LEVYING.****(§ III A—40)—LIABILITY OF CONSTABLE—JUSTIFICATION.**

Where an execution is issued by a stipendiary magistrate after the lapse of one year without the affidavit required by sec. 32, ch. 160, R.S.N.S. 1900, but is otherwise within the jurisdiction of the magistrate and in regular form, a seizure by a constable under such warrant is a mere ministerial act, and will afford absolute justification to the officer executing it. [Sleeth v. Hurlbert, 25 Can. S.C.R. 620, 628; Morse v. James, Willes 122, 123, followed.]

Law v. Lovell, 25 D.L.R. 37.

(§ III A—40)—SEIZURE OF REGISTERED MORTGAGE—POWER OF SHERIFF.

The sheriff has no power to seize and sell a registered mortgage of lands, his duty being to hold it as security for the amount due under the writ with power to sue for the recovery of the amount secured when the time for payment shall arrive.

Channel v. People's Home Co., 9 W.W.R. 169.

B. OF OTHERS.

(**§ III B—45**)—SEIZURE OF PARTNER'S GOODS UNDER WRIT AGAINST FIRM.

A partner, whose goods are illegally seized under a writ directed against the partnership, cannot claim damages for the illegal seizure where instead of opposing the seizure he pays the debt and costs thereof.

Lavigne v. Paquet Co., 47 Que. S.C. 151.

C. PRIORITIES.

(**§ III C—50**)—SEIZURE UNDER EXECUTION—RIGHTS OF ASSIGNEE FOR CREDITORS.

Where a sheriff, under the Execution Act, B.C., sec. 13, seizes money in specie belonging to the execution debtor, but instead of holding the same for thirty days in like manner as where goods have been levied upon and sold, forthwith pays the money over to the execution creditor, an assignee for creditors under the Creditors Trust Deeds Act, R.S.B.C., ch. 13, to whom the debtor made an assignment immediately after such execution creditor got his money has no status to sue for the money on behalf of all creditors as it no longer belonged to the execution debtor after the sheriff had taken possession of same; nor had the assignee the right to sue for the enforcement of claims which other execution creditors within the thirty-day period might have had against the fund or against the sheriff under the Creditors Relief Act, R.S.B.C. ch. 60. [*Johnson v. Pickering*, [1908] 1 K.B. 1; *Clarkson v. Severs*, 17 Ont. R. 392, referred to.]

Adam v. Richards, 22 D.L.R. 509, 21 B.C.R. 212, 8 W.W.R. 701.

IV. Bond for release of.

(**§ IV—55**)—ABANDONMENT OF SEIZURE BY TAKING BOND—PRIORITIES—BONA FIDE PURCHASER—GARNISHING CREDITOR.

The sheriff's bailiff seized under execution 85 acres of wheat crop, in stock. He then took from the judgment debtor a bond without sureties, the condition of which was that the sheriff should be permitted by the judgment debtor to enter upon the premises and retake the goods when required. The bailiff thereupon left the premises and did nothing further. The wheat was sold to an elevator company who bought without notice of the foregoing facts. Before the purchase money was paid over it was attached by a garnishing order issued in an action at the suit of C against the judgment debtor: In an interpleader issue between the sheriff and C it was held that the seizure had been abandoned. [*Little v. Magle*, 29 W.L.R. 596, distinguished.] Held, also, that the elevator company had acquired a good title to the wheat: Rule 478 (Sask.). [*Dixon v. Mackay*, 21 Man. L.R. 762, followed.] In order to maintain his seizure the sheriff must retain actual and continued possession until sale. [*Ackland v. Paynter*, 8 Price 95; *Blade v. Arundel*, 1 M. & S. 711, followed.] Held, also, that the bond did not constitute

actual and continued possession by the sheriff. [*Dodd v. Vail*, 23 W.L.R. 62 and 903, distinguished.]

Nicoll v. Canadian Bank of Commerce, 31 W.L.R. 667.

LIBEL AND SLANDER.

I. WHO LIABLE.

II. WHAT ACTIONABLE.

A. In general.

B. Charging lewdness, bad character, crime, etc.

C. Damaging business; social standing.

D. Words about officials or candidates.

E. Privileged communications.

F. What constitutes a publication.

G. Slander of title.

III. ACTIONS; DEFENCES.

A. In general.

B. Who may recover.

C. Defences; justification.

Annotations.

Examination for discovery in defamation cases: 2 D.L.R. 563.

Repetition; lack of investigation as affecting malice and privilege: 9 D.L.R. 73.

Repetition of slanderous statements; acts of plaintiff inducing defendant's statement; interview for purpose of procuring evidence of slander; publication and privilege: 4 D.L.R. 572.

Separate and alternative rights of action; repetition of slander: 1 D.L.R. 533.

Church matters when privileged or libellous: 21 D.L.R. 71.

I. Who liable.

(See previous Annual Digests.)

II. What actionable.

A. IN GENERAL.

(**§ II A—13**)—DEFAMATORY CHARGES DIRECTED AGAINST A RACE—RIGHTS OF INDIVIDUAL MEMBERS.

In a libel case, if the writing alleged to be libellous contains no defamatory allegation in respect to individuals, but only a dissertation more or less violent and passionate as to the philosophical, social or religious opinion ascribed to a corporation, a religious sect, or an association, it is not defamatory. A writing attacking a Jewish population composed of seventy-five families in a population of eighty thousand persons, in terms which would be libellous if addressed to an individual, is not addressed to an assemblage numerous enough to be lost in the number, and should be considered as defamatory. In this case one of the members of this Jewish body may bring an action for damages against the author of the libel.

Ortenberg v. Plamondon, 24 Que. K.B. 69.

B. CHARGING LEWDNESS, BAD CHARACTER, CRIME, ETC.

(**§ II B—15**)—CHARGING MORAL AND PHYSICAL DEGENERACY.

A newspaper which publishes that the

plaintiff "has all the characteristics of moral and physical degeneracy," that he has "all the symptoms of insanity which the police should watch over, and that the Government should cause him to be examined by experts," is guilty of an injurious, malicious, and defamatory libel.

Fournier v. Soleil Pub. Co., 47 Que. S.C. 45.

(§ II B—18)—CHARGE OF ILLEGAL MARRIAGE—RIGHT OF ACTION BY CHILDREN.

A charge that a man and his wife lived in a state of concubinage pre-supposes the illegitimacy of their children, and will entitle such children to maintain an action for libel regardless whether it is true or not.

Chiniquy v. Begin, 24 D.L.R. 687, 24 Que. K.B. 294, reversing 20 D.L.R. 347, and varying 7 D.L.R. 65.

C. DAMAGING BUSINESS; SOCIAL STANDING.

(§ II C—25)—CHARGE OF OBTAINING OTHER'S LANDS BY POLITICAL INFLUENCE.

A publication charging a trading company with having used political influence for the purpose of procuring legislation giving it possession to lands in derogation of what, to its knowledge, were the property of the publisher of the charges, is an imputation calculated to injure the corporation in its business, and therefore actionable. [22 Que. K.B. 393, affirmed.]

Price v. Chicoutimi Pulp Co., 23 D.L.R. 116, 51 Can. S.C.R. 179.

(§ II C—37) — CHURCH MATTERS — ECCLESIASTICAL CENSURE.

An action does not lie against a church bishop merely because of his ecclesiastical direction to his congregation not to deal with a certain excommunicated member of the church where the statement is not defamatory. [Allen v. Flood, 67 L.J.Q.B. 119; Quinn v. Leatham, [1901] A.C. 495, 507; Giblan v. National, 72 L.J.K.B. 907, 912, referred to.]

Heinrichs v. Wiens, 21 D.L.R. 68, 32 W.L.R. 30.

D. WORDS ABOUT OFFICIALS OR CANDIDATES.

(§ II D—46)—FAIR CRITICISM.

A municipal councillor who seeks reelection must submit himself to a fair criticism of his former conduct while he was in office, provided that it does not contain any false nor calumnious imputations, that it is made in good faith, in the public interest, and without malice.

Lingley v. Gaas, 48 Que. S.C. 297.

E. PRIVILEGED COMMUNICATIONS.

(§ II E 3—69)—STATEMENTS BY MANAGER AS TO CONDUCT OF EMPLOYEE.

Statements made by the manager of a store to parents in answer to their inquiries as to the grounds of the dismissal of their daughter, that she had sent goods home from the store without charging them, which im-

plied theft, are privileged communications from which no actual malice can be inferred, and, therefore, not actionable slander.

Matheson v. Brown, 24 D.L.R. 844, 49 N.S.R. 198.

III. Actions; defences.

A. IN GENERAL.

(§ III A—95)—NEWSPAPER LIBELS—SECURITY FOR COSTS—SUFFICIENCY OF AFFIDAVIT.

An affidavit by the defendant in an action for a newspaper libel stating his belief, after diligent inquiry, that the plaintiff is not possessed of property sufficient to answer the costs of the action, sufficiently meets the onus probandi to establish the negative as to the plaintiff's pecuniary liability under sec. 12 of the Libel and Slander Act, R.S.O. 1914, ch. 71, and will entitle him to an order for security for costs. [Paladino v. Gustin (1897), 17 P.R. (Ont.) 553, distinguished.]

Augustine Automatic Rotary Engine Co. v. "Saturday Night," 24 D.L.R. 767, 34 O.L.R. 167, 8 O.W.N. 503.

B. WHO MAY RECOVER.

(§ III B—100)—PERSON LIBELED REPRODUCING LIBEL.

A journalist who is libeled in a newspaper and who reproduces the libellous article in his own paper with comments, does not thereby abandon his right to sue for damages, but this reproduction increases the publicity of the libel, for which the defendant cannot be held responsible.

Fournier v. Soleil Pub. Co., 47 Que. S.C. 45.

C. DEFENCES; JUSTIFICATION.

(§ III C—105)—DEFENCE OF FAIR COMMENT—ERROR IN JUDGE'S CHARGE INDUCED BY DEFENDANT—MISTRIAL—DAMAGES—NEW TRIAL—COSTS.

Jackes v. Mail Printing Co., 7 O.W.N. 677.

(§ III C—111)—JUSTIFICATION—FAIR COMMENT—BELIEF IN TRUTH—MISDIRECTION.

In an action to recover damages for libel, a direction by the trial Judge to the jury that the defence of justification would be established if the defamatory statements had been made in honest belief of their truth, although in fact untrue, and that, if the publications were an honest comment on the facts, that, in itself, would be sufficient to establish the defence of fair comment, is erroneous and misleading. [22 Que. K.B. 393, affirmed.]

Price v. Chicoutimi Pulp Co., 23 D.L.R. 116, 51 Can. S.C.R. 179.

(§ III C—111)—NEWSPAPER CHARGING EXPULSION FROM RACE-TRACK—INNUENDO—JUSTIFICATION—TRUTH.

The defendant company printed and published in a newspaper a statement that the plaintiff had been fined and suspended from association race-tracks for assaulting C., the

starter at a race-meeting. The plaintiff brought an action for libel. The innuendo was, that the plaintiff had been guilty of an unlawful assault and of an indictable offence and of improper conduct as a horesman. The important defence was: "In so far as the said words consist of allegations of fact, they are true in substance and in fact, save that the plaintiff did not assault C., but was fined by him for irregularities on the race-track."

The evidence at the trial shewed that the assault was not committed by the plaintiff, but by another person, and that in fact the fine was intended to be imposed upon another. It was recorded, however, against the plaintiff, and remained against him until removed, on the facts becoming known. The trial Judge ruled that the newspaper statement did not in fact allege that the plaintiff had assaulted C., but did allege that the plaintiff was fined for assault, and the defence quoted was treated as an ordinary plea of justification. There was a verdict for the defendant:—Held, that the defence, if treated as one of justification simply, was disproved when it was shewn that C. intended to fine some one other than the plaintiff, notwithstanding that he recorded the fine against him. If dealt with as its language required, it was an admission to the same effect. The jury having found for the defendant, in face of an admission and against evidence that the newspaper statement was untrue as to one part—a part clearly libellous in the circumstances—the verdict could not stand. [*Lumaden v. Spectator Printing Co.*, 29 O.L.R. 293, followed.] Held, also, that evidence was improperly admitted of a previous fine, imposed during the day for irregularities on the track, which fine was withdrawn.

Govenlock v. London Free Press Co., 35 O.L.R. 79.

(§ III C—111)—JUSTIFICATION—TRUTH.

In an action claiming damages for defamation evidence of the truth of the facts cannot be received as justification, but the Court can take it into consideration from the point of view of the intention to cause injury, which is an element of the defamation, and for the mitigation of the damages.

Bois v. Deschêne, 48 Que. S.C. 178.

(§ III C—112)—ATTACKS BY POLITICAL NEWSPAPERS—PROVOCATION.

In an action claiming damages for libel in a political newspaper, it is permissible to plead, as an extenuation of the fault, provocation by the plaintiff in another paper of articles alleged to be injurious and harmful attacking collectively the French-Canadian deputation to the Federal Parliament, and especially the political friends of the newspaper put on its defence. The Court can take the circumstances into account in order to determine the extent of the liability of the defendant. In any case such provocation should be direct and personal. The defence cannot allege that the articles that it invokes as provocation are untrue, defamatory

and libellous; the last ground is an exception to the right of another, and can in any case only furnish matter for an incidental demand.

Fournier v. Soleil Pub. Co., 47 Que. S.C. 45.

LIBERTY OF SUBJECT.

See Habeas Corpus.

LICENSE.

- I. FROM PRIVATE PERSONS.
 - A. In general.
 - B. Revocation.
- II. FROM PUBLIC; OF RIGHT TO DO BUSINESS.
 - A. Generally.
 - B. Power as to, generally.
 - C. On what business.
 - D. Uniformity and equality; discrimination.
 - E. Reasonableness; amount.
 - F. Enforcement of license tax.

Negligence as to licensees generally, see Negligence; Railways; Carriers.

On automobiles, see Automobiles.

Of license to sell liquors, see Intoxicating Liquors, II.

Teacher's license, see Schools.

Timber licenses, see Timber; Logs and Logging.

Pilotage license, see Shipping.

Scope of spectator's license, see Amusements.

Municipal powers as to, see Municipal Corporations.

Annotation.

Municipal license to carry on a business; powers of cancellation: 9 D.L.R. 411.

I. From private persons.

(See previous Annual Digests.)

II. From public; of right to do business.

A. GENERALLY.

(§ II A—14)—CONFIRMATION OF CERTIFICATE—OPPOSITION—REVOCATION.

The municipal elector who signs an opposition to the grant of a license certificate cannot withdraw his signature, and art. 930 of R.S.Q. 1909, as amended by the Act of 1910 (1 Geo. V., ch. 10), permitting a municipal elector to personally appear before the authorities charged with the duty of confirming the certificate and to withdraw his signature does not apply to an opposition signed by the absolute majority of the municipal electors. Resolutions of a municipal council permitting the signers of an opposition to the confirmation of a certificate for license to withdraw their signatures so that it will no longer contain the entire majority, and confirming the certificate, notwithstanding his opposition, are illegal and ultra vires, and will be quashed on application of the municipal elector.

Chaput v. Village of St. Denis, 47 Que. S.C. 146.

C. ON WHAT BUSINESS.

(§ II C—27)—THEATRES AND MOVING PICTURES—POWERS AS TO REGULATION.

The Theatres Act, ch. 25, 1911-12, provides by sec. 3 that the Lieutenant-Governor-in-Council shall have power from time to time to make regulations governing the erection, operation and safety of all classes of theatres and entertainment halls, and the erection and supervision of the same; and by sec. 4 to make regulations for licensing, controlling and governing the use and operation of cinematographs, moving picture machines or similar apparatus, and for regulating or prohibiting the exchange, leasing, sale or exhibition of films, and by sec. 13, such regulations as may be deemed necessary, advisable or convenient for the purpose of carrying into effect the provisions of the Act:—Held, that the above provisions do not authorize the Lieutenant-Governor-in-Council to impose a license fee on theatres.

Lethbridge v. Wilson, 8 A.L.R. 178, 8 W.W.R. 424.

E. REASONABLENESS; AMOUNT.

(§ II E—70) — MUNICIPAL CORPORATIONS — TRANSIENT TRADERS' BY-LAW—EXCESSIVE LICENSE FEE—MUNICIPAL ACT, R.S. O. 1914, CH. 192, SEC. 420, PARA. 7 (c)—MOTION TO QUASH CONVICTION—IRREGULARITIES—COSTS.

Re Borror's Conviction, 8 O.W.N. 601.

F. ENFORCEMENT OF LICENSE TAX.

(§ II F—80) — MUNICIPAL CORPORATIONS — TRANSIENT TRADERS' BY-LAW—CONVICTION—JUSTICE OF THE PEACE—JURISDICTION—ABSENCE OF EVIDENCE OF OFFENCE AGAINST BY-LAW.

Rex v. Borror, 9 O.W.N. 64.

LIENS.

I. IN GENERAL.

II. PRIORITIES.

III. LOSS; WAIVER; DISCHARGE.

Of mechanic or materialmen, see Mechanics' Liens.

Of mortgage, see Mortgage.

Lien note on sale of goods, see Sale.

Reliance upon record, knowledge of secret liens, see Records and Registry Laws; Land Titles.

Of seller on conditional sale of goods, see Sale.

Of vendor on sale of lands, see Vendor and Purchaser.

Miner's liens, see Mines and Minerals.

Woodmen's liens, see Logs and Logging; Timber.

Seamen's liens, see Seamen; Salvage; Shipping; Admiralty.

Annotation.

For labour; for materials; of contractors; of sub-contractors: 9 D.L.R. 105.

I. In general.

(§ I—1)—CHARGE FOR STORAGE—CHATTEL HELD FOR OTHER DEBT.

A person who has a lien upon a chattel for a debt cannot, if he keeps the chattel to enforce payment on the lien, add to the amount for which the lien exists, a charge for keeping the chattel until the debt is paid; there is no implied promise to pay for storage when the bailee has retained the goods for his own benefit. [Somes v. British Empire Shipping, 8 H.L.C. 338, applied; Canada Steel & Wire Co. v. Ferguson, 19 D.L.R. 581, reversed.]

Canada Steel & Wire Co. v. Ferguson, 21 D.L.R. 771, 25 Man. L.R. 320, 8 W.W.R. 416.

II. Priorities.

(See previous Annual Digests.)

LIFE INSURANCE.

See Insurance.

LIFE TENANTS.

Creation of life tenancy by will, see Wills; Deeds.

Compensation to in expropriation proceedings, see Eminent Domain, III C; Damages, III L.

LIGHT.

Electric light, see Electricity.

LIMITATION OF ACTIONS.

I. LIMITATION IN GENERAL.

A. In general; statutes.

B. Equitable remedy; laches.

C. Bar of prior or other claim, or of portion of claim or defence.

D. By and against whom available.

E. To what claims applicable.

II. WHEN STATUTE RUNS.

A. In general.

B. Contracts; mortgages.

C. Corporations, officers and stockholders.

D. Trusts; bailment.

E. Fraud.

F. Torts; negligence; injuries to person or property; crimes.

G. Suits relating to real property.

H. Municipal indebtedness or liabilities.

I. Taxes, assessments and tax sales.

J. Decedent's estate; executors and administrators.

K. Judgment.

L. Absence from province.

M. Coverture, infancy or other disability.

III. WHEN ACTION IS BARRED.

A. Penalty; statutory liability.

B. Contracts; contribution.

C. Corporations; officers and stockholders.

D. Trusts.

E. Fraud.

F. Torts; negligence.

G. Suits relating to real property.

- H. Taxes.
- I. Judgment.
- J. Miscellaneous.

IV. INTERRUPTION OF STATUTE; REMOVAL OF BAR.

- A. In general.
- B. By suit.
- C. By payment or promise.

As to adverse possession, see Adverse Possession.

Easement by prescription, see Easements.

Prescriptive rights in waters, see Waters.

Contractual limitations as to claims against railways, see Carriers; Railways; Street Railways.

Time for giving notice of injury by defective highway, see Highways; Municipal Corporations.

Estoppel by laches, see Estoppel, III.

I. Limitation in general.

D. BY AND AGAINST WHOM AVAILABLE.

(§ I D—26) — CORPORATIONS — ELECTRIC COMPANY.

The statutory obligation of an electric railway company to supply lighting to customers within a certain distance of the company's lines makes its negligence in allowing a dangerous current to set fire to the customer's premises one in relation to the works or operations of the defendant, and the customer's action therefor must be brought within the period of limitation which is provided for that class of action by its special Act (Consolidated Railway Companies Act, 1896, B.C., ch. 55, sec. 44). [B.C. Electric v. Crompton, 43 Can. S.C.R. 1, referred to; Lyles v. Southend, [1905] 2 K.B. 1, applied.]

Union Ass. Co. v. B.C. Electric R. Co., 21 D.L.R. 62, 8 W.W.R. 327, 21 B.C.R. 71, 30 W.L.R. 717.

II. When statute runs.

B. CONTRACTS; MORTGAGES.

(§ II B—41)—NEGOTIABLE NOTE—LOAN.

A promissory note payable to order given for a loan at interest and not in acknowledgment of a prior debt, is subject to the prescription of five years.

Hebert v. Demers, 47 Que. S.C. 252.

(§ II B—41) — PROMISSORY NOTES — ACTION AGAINST MAKER—COMPUTATION OF DAYS IN STATUTORY PERIOD—RATE OF INTEREST POST DIEM—INTEREST FROM COMMENCEMENT OF ACTION TO JUDGMENT IN ADDITION TO SIX YEARS' ARREARS.

Canadian Heating and Ventilating Co. v. Cutts, 8 O.W.N. 565.

(§ II B—41)—PROMISSORY NOTE PAYABLE ON DEMAND—TIME OF COMMENCEMENT OF STATUTORY PERIOD—DEPARTURE OF MAKER FROM PROVINCE AFTER COMMENCEMENT.

Findlay v. Battram, 9 O.W.N. 308.

E. FRAUD.

(§ II E—55)—FRAUD AND MISREPRESENTATION—RECOVERY OF MONEYS OBTAINED BY—RESCISSION—AMENDMENT.

Johnston v. Haynes, 8 O.W.N. 551.

F. TORTS; NEGLIGENCE; INJURIES TO PERSON OR PROPERTY; CRIMES.

(§ II F—60)—RAILWAY FIRES—OPERATION OF RAILWAY.

The burning of worn-out ties by a railway company on its right of way in performance of the duty imposed by sec. 297 of the Railway Act, R.S.C. 1906, ch. 37, to keep the right of way free from unnecessary combustible matter, any damage or injury resulting therefrom is caused by reason of the "operation of the railway" within the meaning of that phrase in sec. 306, the right of action for which accrues within one year. [Greer v. C.P.R. Co., 19 D.L.R. 140, 32 O.L.R. 104, affirmed.]

Greer v. C.P.R. Co., 23 D.L.R. 337, 51 Can. S.C.R. 338, 19 Can. Ry. Cas. 58.

(§ II F—60)—RAILWAY CLAIMS—NEGLIGENT WAREHOUSING — DAMAGE FROM "CONSTRUCTION AND OPERATION."

An action for breach of a railway company's contract of warehousing entered into by it after the arrival of the consignment at destination is not within the limitation of sec. 306 of the Railway Act, Can., which deals with actions for damages caused by reason of the "construction or operation" of the railway. [Walters v. C.P.R. Co., 1 Terr. L.R. 88, doubted.]

Great West Supply Co. v. G.T.P.R. Co., 23 D.L.R. 780, 8 A.L.R. 478, 8 W.W.R. 720, 31 W.L.R. 259.

(§ II F—60)—ACTIONS AGAINST RAILWAYS—INUNDATION CAUSED BY DEFECTIVE DITCHES.

An action for damages brought against a railway company for having neglected to keep its ditches in repair, and having thereby caused damages to the plaintiff by inundating his land, being founded upon a quasi-délit, is prescribed by two years.

Sénécal v. G.T.R. Co., 48 Que. S.C. 496.

G. SUITS RELATING TO REAL PROPERTY.

(§ II G—66)—FLOODING OF LANDS—DEFECTIVE CULVERT—CONTINUATION OF DAMAGE.

The negligent construction of a culvert obstructing the flow of a natural watercourse and causing the flooding of lands is a continuation of damage, and the limitations under sec. 267 of the Railway Act (B.C.) 1911, ch. 44, will not begin to run until after one year after the doing or committing of such damage ceases. [McGillivray v. G.T.P.R. Co., 25 U.C.Q.B. 69, followed.]

McCrimmon v. B.C. Electric R. Co., 24 D.L.R. 368, 8 W.W.R. 1289, 32 W.L.R. 81, affirming 20 D.L.R. 834, 7 W.W.R. 137.

H. MUNICIPAL INDEBTEDNESS OR LIABILITIES.**(§ II H—70)—NEGLIGENCE ACTIONS.**

Section 2 of the Municipal Act, R.S.O. 1914, ch. 192, which bars any action for negligence against a municipality if not brought within three months from the time when the damages were sustained, will also apply to a case where the municipality is added as a party defendant after the expiration of the statutory period, although the action was instituted within the time.

Burrows v. G.T.R. Co., 23 D.L.R. 173, 18 Can. Ry. Cas. 183, 34 O.L.R. 142, 8 O.W.N. 459.

(§ II H—70)—DAMAGE CAUSED BY THE PILING OF SNOW.

In the case of damages claimed from the city of Montreal as having succeeded to the rights and obligations of the Toll Road Trustees of Montreal, damages caused by the piling of snow in an orchard alongside a snow fence erected by the city, the prescription which applies is not that of six months provided for by the charter of the city of Montreal, but that of twelve months contained in the Revised Railway Act of Quebec, R.S. 1909, art. 6642. This prescription begins to run, not from the construction of the snow fence, but from the time at which the injury was suffered, and could be definitely ascertained. The privilege of notice of action and of prescription should be strictly interpreted.

Del Sole v. City of Montreal, 24 Que. K.B. 550.

J. DECEDENT'S ESTATE; EXECUTORS AND ADMINISTRATORS.**(§ II J—80)—DISSOLUTION OF PARTNERSHIP BY DEATH—ACCOUNTING.**

A partnership, formed for the purchase of book debts, stocks and immovables for the purpose of speculation, is commercial; but the administration and liquidation of such partnership by the legatees or heirs of one of the partners are not commercial acts, and the action for an account by the surviving partner against them is not prescribed by five years from the death of the other partner.

Ostigny v. Savignac, 47 Que. S.C. 376.

III. When action is barred.**C. CORPORATIONS, OFFICERS AND STOCK-HOLDERS.****(§ III C—115)—ACTIONS AGAINST MUNICIPALITIES—MANDAMUS PROCEEDINGS.**

Hanna v. City of Victoria, 24 D.L.R. 889, 9 W.W.R. 761, 32 W.L.R. 916.

F. TORTS; NEGLIGENCE.**(§ III F—131) — WORKMEN'S COMPENSATION — ACTION FOR NEGLIGENCE.**

Where in an action for negligence it is found that the damages therein are to be fixed as a compensation under sec. 3 (4) of

the Workmen's Compensation Act (Alta.) 1908, ch. 12, the Court will not allow any compensation under the Act where the original action is not commenced within the statutory period of 6 months. [Smolik v. Walters, 1 D.L.R. 891, followed.]

Berge v. Mackenzie, Mann & Co., 24 D.L.R. 575, 8 W.W.R. 1191, 31 W.L.R. 936.

(§ III F—131) — WORKMEN'S COMPENSATION — RAILWAY ACCIDENTS—PROVINCIAL AND DOMINION LEGISLATION.

The period of limitations of actions under a Provincial Workmen's Compensation Act is unaffected by the lesser period provided by sec. 306 of the Dominion Railway Act, even though the injuries arose while employed in the construction or operation of the railway. [Sutherland v. C.N.R. Co., 21 Man. L.R. 27, considered.]

Peszeniczny v. C.N.R. Co., 25 D.L.R. 128, 25 Man. L.R. 655, 9 W.W.R. 205, 32 W.L.R. 460.

I. JUDGMENT.**(§ III I—145)—EXECUTION UPON JUDGMENT.**

Execution upon a judgment is barred if application for leave to issue execution is not commenced within the period prescribed in the Limitations Act, R.S.O. 1914, ch. 75, sec. 49 (1). [Poucher v. Wilkins, 21 D.L.R. 444, distinguished.]

Doel v. Kerr, 25 D.L.R. 577, 34 O.L.R. 251, 8 O.W.N. 581.

IV. Interruption of statute; removal of bar.**B. BY SUIT.****(§ IV B—160)—PETITION OF RIGHT.**

The lodging of a petition of right with the Secretary of State, in compliance with the provisions of sec. 4 of the Petitions of Right Act (R.S. 1906, ch. 142) will interrupt prescription within the meaning of art. 2224 C.C.P.Q.

Saindon v. The King, 15 Can. Ex. 305.

C. BY PAYMENT OR PROMISE.**(§ IV C—166)—PAYMENT OF DIVIDEND BY ASSIGNEE OR CURATOR.**

The payment of a dividend by a curator or assignee for creditors does not imply a new promise by the debtor so as to raise a new obligation to pay a debt barred by limitations. [Birkett v. Bisonette, 15 O.L.R. 93, applied.]

Quaker Oats Co. v. Denis, 24 D.L.R. 226, 8 W.W.R. 877, 31 W.L.R. 579, affirming 19 D.L.R. 327, 8 A.L.R. 31.

(§ IV C—167) — ACKNOWLEDGMENT OF DEBT — CONDITIONAL PROMISE TO PAY.

A promise to pay conditional upon the promisor's ability to do so does not operate as an absolute acknowledgment of a debt barred by limitations.

Quaker Oats Co. v. Denis, 24 D.L.R. 226, 8 W.W.R. 877, 31 W.L.R. 579, affirming 19 D.L.R. 327, 8 A.L.R. 31.

(§ IV C—167)—PROMISE OR ACKNOWLEDGMENT—"MY DEBT."

Agreeing to waive the Statute of Limitations is not a sufficient acknowledgment unless coupled with a promise; and though the expression "my debt" might by itself be construed as implying a promise of immediate payment, it is not so if negated by the debtor's statement of his inability to pay. [Rackham v. Marriott, 2 H. & N. 196; Smith v. Thorne, 18 Q.B. 134, followed.]

Lyman's Ltd. v. Gagner, 23 D.L.R. 567, 31 W.L.R. 700.

(§ IV C—167)—ACKNOWLEDGMENT OF DEBT.

When a debtor executes a contract in writing with his creditor by which he undertakes to do some work for \$70, and that at the foot of the document places the following clause: "I agree to pay five dollars on old bill from above amount," he acknowledges that he owes the old debt, the prescription of which is therefore interrupted.

O'Shea v. Hague, 47 Que. S.C. 394.

LIMITATIONS.

Of estates, see Deeds; Wills.

Of carrier's liability, see Carriers; Railways; Shipping.

LINE FENCES.

See Boundary; Fences; Railways.

LIQUIDATED DAMAGES.

See Damages, III.

LIQUIDATION.

Of company, see Corporations and Companies, VI.

Of bank, see Banks, V.

Of partnership, see Partnership, VI.

LIQUIDATORS.

See Receivers; Corporations and Companies, VI.

LIQUOR LAWS.

See Intoxicating Liquors.

LIS PENDENS.

I. IN GENERAL.

II. PURCHASERS PENDING SUIT.

As affecting land titles, see Land Titles; Vendor and Purchaser.

I. In general.

(§ I—4) — VACATION OF — CONVEYANCE BY HUSBAND TO WIFE UPON SEPARATION—RECOHABITATION—ACTION FOR DECLARATION OF RIGHTS.

Bowers v. Bowers, 25 D.L.R. 838, 34 O.L.R. 463, 9 O.W.N. 66.

II. Purchasers pending suit.

(§ II—10)—DISCHARGE OF—LAND TITLES ACT.

In an action for the specific performance

of an agreement for the sale of land, the plaintiff issued and registered in the Land Titles Office a certificate of lis pendens. The defendant moved before the Local Master at Saskatoon to have the lis pendens discharged on the ground that there was no authority to issue the same except in actions respecting mechanics' liens. The Local Master having refused the application, the defendant appealed to a Judge in Chambers. On appeal:—Held, that although the certificate of lis pendens was issued out of the Court, yet the registering of it in the Land Titles Office was the act of the registrar and not of an official of the Court. That the application not being made under any of the provisions of the Land Titles Act, and the action itself not having been disposed of, a Judge in Chambers has no power on such a motion as the present to direct the registrar to vacate the registration of the certificate of lis pendens.

Dufour v. Dehid, 8 S.L.R. 19.

LITTORAL RIGHTS.

See Waters.

LIVERY STABLE.

(§ I—2)—HIRE OF HORSE—DUTY OF KEEPER TO WARN NATURE OF ANIMAL.

The keeper of a livery stable who hires a horse to another is bound to give notice to the bailee of any dangerous quality in the animal hired of which he has or should have knowledge, and failure to give such notice, while it may not be accurately designated contributory negligence, may in an action against the bailee for an injury resulting from neglect to exercise proper caution go directly to the question of the bailee's negligence and liability.

Gray v. Steeves, 42 N.B.R. 676.

LIVE STOCK.

In general, see Animals.

Transportation of, see Carriers; Railways.

LOCAL IMPROVEMENTS.

See Public Improvements; Municipal Corporations; Highways.

Assessment for, see Taxes.

LOCAL OPTION.

In general, see Intoxicating Liquors.

LOCOMOTIVE.

Fire set by sparks from, see Railways; Fires.

Injuries to trainmen, see Master and Servant.

LOGS AND LOGGING.

See also Timber.

(§ I—1)—JURISDICTION AS TO RATES—REASONABLENESS—POWER OF COURTS TO REVIEW.

Questions relating to the establishment

of rates and their reasonableness under art. 7300, R.S.Q. 1909, for the privilege of logging or the value of improvements made by a company to facilitate the driving of logs, are left to the entire discretion of the Lieutenant-Governor-in-Council, whose decisions are final, and from which the law provides no appeal to the Courts.

Shives Lumber Co. v. Chaleur Bay Mills, 25 D.L.R. 262, 24 Que. K.B. 408.

(§ I-9)—CONTRACT FOR CUTTING AND HAULING — NON-DESIGNATION OF SCALE — RIGHTS OF PARTIES.

In an action for a balance claimed due on a contract for cutting and hauling logs, containing a clause that they are "to be paid for according to the count and scale of —, which shall be final and conclusive between the parties," without naming the scale to be used, the plaintiff will not be bound by the scale appointed by the defendant, but evidence of scales appointed by both will be received to determine the quality of logs to be paid for.

Blue v. Miller, 24 D.L.R. 852, 43 N.B.R. 307.

(§ I-10)—WOODMEN'S LIEN—WHO ENTITLED.

The lien provided by art. 1994 (c), C.C. Que., to secure the charges of any person engaged in cutting or manufacturing lumber, applies not only to those who are directly engaged in the work themselves, but also to those who have the work done by others.

Houseman v. LePage, 25 D.L.R. 332, 24 Que. K.B. 413.

(§ I-10)—WAGES—WOODMAN'S LIEN.

The contractor for logging operations is entitled as well as the wage earner to a lien on the logs or lumber in respect of the work he has had performed in cutting the timber and hauling the logs to the mill for the agreed contract price by virtue of the Woodman's Lien Act, Alta., 1913, 2nd sess., ch. 28. [Baxter v. Kennedy, 35 N.B.R. 179, distinguished.]

Desautels v. McClellan, 23 D.L.R. 625, 7 W.W.R. 1221, 30 W.L.R. 485.

(§ I-10)—WOODMEN'S LIEN—ENFORCEMENT — SEVERAL CLAIMS — JURISDICTIONAL AMOUNT.

McNulty v. Clark, 25 D.L.R. 832, 34 O.L.R. 434, 9 O.W.N. 58.

(§ I-10)—WOODMEN'S LIEN—DEMAND OF AMOUNT DUE—SPECIFICNESS.

The demand required by the Woodmen's Lien Act, C.S. 1903, ch. 148, before the writ attaching the property issues, need not be of the specific amount due. [Murchie v. Fraser, 36 N.B.R. 161, considered and explained.]

Olsen v. Goodwin; Branson v. Goodwin, 43 N.B.R. 449.

(§ I-10)—CLAIM FOR TOWAGE—PRIORITIES BETWEEN WOODMEN'S LIENS AND MARITIME LIENS.

Greer, Coyle Co., tow-boat operators acting under the instructions of the manager

of the Pacific Slope Lumber Co., brought, in December, 1914, two booms of logs from Greenway Sound to Vancouver, and earned in freight the sum of \$442. While they were in possession of the said logs the same were seized by the sheriff of Vancouver District under an execution in the suit of Prembo et al., who were execution creditors under the Woodmen's Lien Act; and had judgment against the company for some \$6,000. Greer, Coyle Co. filed a claim for towage with the sheriff. The sheriff interpleaded, and an issue was tried as to the rights of the woodman's lien creditors, and as to the rights of the tow-boat operators, claimants. The issue was tried before Chief Justice Hunter on January 14, 1915, at Vancouver. Counsel for Prembo et al. relied upon clause 3 in the Woodman's Lien Act, ch. 243, Revised Statutes of B.C., of sec. 3, which gives a lien to any person performing service on logs, which lien has a precedence over all claims except any lien or claim, which the Crown may have upon such logs and excepting timber slide company liens. Counsel for Greer, Coyle Co., tow-boat proprietors, submitted that the towage was practically freight, and that if this contention was correct the tow-boat proprietors were entitled to the protection of freight carrier, and had the same rights at law as accrue to transportation companies earning freight. This lien being recognized by the Maritime Law and the Maritime Shipping Act, could not be interfered with by the Woodman's Lien Act, being a local statute. It was also urged by counsel for the claimants, Greer, Coyle Co., that inasmuch as sec. 3 of the Woodman's Lien Act contained a clause protecting timber slide companies, and inasmuch as the local Act is a copy of the Ontario Woodman's Lien Act, which also protects timber slide companies, and as there are no timber slide companies in British Columbia, the local Act intended to protect persons or companies doing the same class of work in this province as the timber slide companies in Ontario. The learned Chief Justice held that towage was freight, and as such the Maritime Lien took precedence over the Woodman's Lien Act. He also held that the clause in the local Act in the timber slide companies was meant to protect towage and gave judgment in favour of the claimants, Greer, Coyle Co.

Prembo v. Pacific Slope Lumber and Greer, Coyle Cos., 7 W.W.R. 1195.

LORD CAMPBELL'S ACT.

Fatal accidents, liability for generally, see Death; Negligence.

Fatal accidents to servants through employers' negligence, see Master and Servant.

By electric shock, see Electricity.

Damages for fatal accidents, amount of, see Damages, III.

LORD'S DAY.

See Sunday.

LOSS.

Of property in hands of bailee, see Bailment.

Of cheque or note, see Banks; Cheques; Bills and Notes.

Of profits, see Damages, III.

Proof of loss of insured property, see Insurance, VI.

Who must bear loss of article sold, see Sale.

Liability of trustee for, see Trusts.

Loss of baggage, see Carriers.

LOTTERY.

See also Gaming.

Annotation.

Lottery offence under the Criminal Code: 25 D.L.R. 401.

(§ I—2)—COUPON WITH STORE PURCHASES—GIFT WITH WINNING NUMBER.

The giving of an automobile by a department store under an advertised scheme whereby all purchasers of \$1 worth of goods or more obtained a free coupon belonging to a series from which one particular number had been selected as the winning number to be disclosed after the close of the competition, is an offence under the lottery clauses of the Cr. Code; and the advertisement and management of such scheme are punishable under sub-secs. (a) and (c) respectively of Cr. Code sec. 236. [Taylor v. Smetton, 11 Q.B.D. 207; Hall v. McWilliam, 85 L.T. 239; Willis v. Young, [1907] 1 K.B. 448, referred to; and see Annotation on "Lotteries," 25 D.L.R. 401.]

Rex v. Hudson's Bay Co., 25 D.L.R. 396; 25 Can. Cr. Cas. 1, 9 W.W.R. 522, 32 W.L.R. 900.

LUMBER.

Contract for cutting, see Contract; Timber.

Lien on, see Lien; Logs and Logging.

Timber licenses, see Timber.

LUNATICS.

See Incompetent Persons.

MACHINERY.

As fixtures, see Fixtures.

Injury to employee by, assumption of risk, contributory negligence of servant, see Master and Servant.

MAGISTRATE.

See also Justice of the Peace.

Summary conviction by, see Summary Conviction.

Liability for false imprisonment, see False Imprisonment; Arrest; Malicious Prosecution.

Mandamus to, see Mandamus.

Review of proceedings, see Certiorari; Appeal; Habeas Corpus.

MAINTENANCE.

See Champerty and Maintenance.

Of child, see Parent and Child; Infants.

Of wife, see Husband and Wife.

Of highways, see Highways; Municipal Corporations; Railways; Street Railways; Carriers.

MAJORITY.

Infant's rights upon attaining, see Infants.

Majority vote, see Elections.

As affecting municipal by-laws, see Municipal Corporations.

Temperance and local option elections, see Intoxicating Liquors.

MALICE.

Maliciously inducing breach of contract, see Contracts, VIII.

Malicious arrest, see False Imprisonment; Arrest.

As element of murder, see Homicide.

Absence of, as defence to libel or slander, see Libel and Slander.

In action or prosecution, see Malicious Prosecution, II.

In assault, see Assault and Battery.

As element in assessing damages, see Damages.

MALICIOUS MISCHIEF.

See Trespass; Criminal Law.

MALICIOUS PROSECUTION.**I. IN GENERAL.****II. WANT OF PROBABLE CAUSE; MALICE.**

A. In criminal prosecution.

B. Of civil action.

III. TERMINATION OF PROSECUTION.

As to false imprisonment, see False Imprisonment; Arrest; Abuse of Process.

Measure of damages for, see Damages, III.

Annotations.

Malicious prosecution; principles of reasonable and probable cause in English and French law compared: 1 D.L.R. 56.

Malicious prosecution; questions of law and fact; preliminary questions as to probable cause: 14 D.L.R. 817.

I. In general.**(§ I—2)—ADVICE OF COUNSEL NO JUSTIFICATION—MITIGATION.**

An informant is not discharged from liability for damages caused by an arrest without probable cause by the mere fact that he acted on the advice of counsel, and it can only be taken into consideration by the Judge in estimating the amount of the damages.

Calogery v. Spencer, 47 Que. S.C. 12.

(§ I—2)—CHARGE OF KEEPING BAWDY-HOUSE—JUSTIFICATION—ADVICE OF COUNSEL.

In an action for malicious prosecution for

charging the plaintiff with keeping a bawdy-house, the fact that the defendant, owing to the mistaken idea he entertained as to what in law constituted a bawdy-house, honestly believed, and under all the circumstances was reasonably justified in believing, the charge to be true, is no defence, nor is the fact that the defendant acted bona fide and under the advice of the clerk of the peace and of counsel of itself enough to afford a good defence.

Crocker v. Storey, 43 N.B.R. 69.

(§ I—2)—REASONABLE AND PROBABLE CAUSE—HONEST BELIEF OF DEFENDANT IN GUILT OF PLAINTIFF—REASONABLE GROUNDS—ADVICE OF COUNTY CROWN ATTORNEY—MALICE—INDIRECT MOTIVE—COUNTERCLAIM.

Sexsmith v. McMath, 9 O.W.N. 228.

II. Want of probable cause; malice.

A. IN CRIMINAL PROSECUTION.

(§ II A—5)—ESSENTIALS OF DEFENCE.

There are four essentials to the defence of reasonable and probable cause in an action for malicious prosecution, namely: (1) an honest belief in the guilt of the accused; (2) this belief being based on an honest conviction of the existence of the circumstances which led the accuser to that conclusion; (3) this belief based on reasonable grounds, i.e., such as would lead any fairly cautious man in the defendant's situation so to believe; and (4) the circumstances so believed and relied on such as amount to reasonable ground for belief in the guilt of the accused. [McMullen v. Wetlaufer, 32 O.L.R. 178, affirmed; Hicks v. Faulkner, 46 L.T.R. 127, applied.]

McMullen v. Wetlaufer, 21 D.L.R. 750, 33 O.L.R. 177, 7 O.W.N. 797.

(§ II A—5)—ADVICE OF COUNSEL—BELIEF IN GUILT.

The advice of counsel, after disclosure of all facts, is cogent evidence of the existence of reasonable and probable cause; but, if the complainant does not believe in the guilt of the accused, there is no reasonable and probable cause for him. [Connors v. Reid, 25 O.L.R. 44, followed.]

McMullen v. Wetlaufer, 21 D.L.R. 750, 33 O.L.R. 177, 7 O.W.N. 797.

(§ II A—10)—BELIEF IN GUILT.

Mere belief in a person's guilt, without ascertaining any reasonable grounds for its probabilities, does not justify a prosecution for the arrest of the accused person. [Hicks v. Faulkner, 46 L.T. 127; Annotation in 1 D.L.R. 56, referred to.]

Rudyk v. Shandro, 24 D.L.R. 330, 9 A.L.R. 87, 8 W.W.R. 880, affirming 18 D.L.R. 641.

(§ II A—10)—PROSECUTION FOR FORGERY—RIVAL CANDIDATES AT ELECTION.

A letter purporting to be written by the Attorney-General voicing the sentiment of a

political party in indorsement of the candidature of the addressee at an election, the writing of which is denied by the alleged author, does not establish reasonable and probable cause for the belief that such letter had been forged by the addressee, in defence of an action for malicious prosecution for the forgery by a rival candidate.

Rudyk v. Shandro, 24 D.L.R. 330, 9 A.L.R. 87, 8 W.W.R. 880, affirming 18 D.L.R. 641.

(§ II A—10)—MALICE—HOW INFERRED—IMPRISONMENT OF RIVAL CANDIDATE.

Where the principal object of a prosecution for forgery is to secure the imprisonment of the accused so as to prevent his participation at an election in which he is a rival candidate, malice will be inferred. [Wright v. Greenwood, 1 W.R. 393, applied.]

Rudyk v. Shandro, 24 D.L.R. 330, 9 A.L.R. 87, 8 W.W.R. 880, affirming 18 D.L.R. 641.

(§ II A—10)—MOTIVE.

In an action for false imprisonment and malicious prosecution it appeared that the defendant had taken proceedings before a magistrate to collect the value of a piece of timber belonging to him which the plaintiff had taken without his knowledge or consent; that without prosecuting the civil proceedings to a conclusion the defendant, on the advice of counsel after informing him of all the facts, laid an information against the plaintiff for stealing:—Held, on a motion for a new trial, that it did not necessarily follow from the fact that the defendant took civil proceedings with a view of collecting from the plaintiff the value of the timber, that that was the motive of the subsequent criminal prosecution apart from any idea of bringing the plaintiff to justice, and therefore malicious.

Priest v. McGuire, 43 N.B.R. 469.

(§ II A—10)—REASONABLE AND PROBABLE CAUSE—FINDING OF TRIAL JUDGE—MALICE—VERDICT OF JURY—DAMAGES—COSTS.

Gratton v. Lavoie, 9 O.W.N. 213.

(§ II A—11)—RECEIVING STOLEN GOODS—PURCHASE AT GROSS UNDERVALUE FROM NON-TRADER.

The fact that a junk dealer had purchased in bulk a quantity of goods which could not properly be classed as junk at a gross undervalue from a non-trader in such goods is sufficient to put such purchaser upon inquiry as to their ownership, and may be set up in proof of reasonable and probable cause in defence of an action for malicious prosecution. [Desaulniers v. Hird, 15 Que. K.B. 394, referred to.]

Klein v. Katz, 24 D.L.R. 794, 24 Can. Cr. Cas. 153, 21 Rev. Leg. 275.

III. Termination of prosecution.

(See previous Annual Digests.)

MALPRACTICE.

Liability for, see Physicians and Surgeons; Dentists.

MALT LIQUORS.

Statute prohibiting sale of, Judicial notice of intoxicants, see Intoxicating Liquors.

MANDAMUS.**I. WHEN MAY ISSUE.**

- A. In general.
- B. To Court or Judge.
- C. To provincial or federal officers.
- D. To county, town or municipal officers.
- E. To corporations.
- F. Concerning elections; to determine title to office.
- G. To school officers.
- H. To excise officers.

II. PROCEDURE; HEARING; DETERMINATION.

- A. In general; prerequisites.
- B. Parties.
- C. Pleading; writ and return.
- D. Hearing and determination; defences.

I. When may issue.**A. IN GENERAL.****(§ I A—4)—EXISTENCE OF OTHER REMEDY.**

The Court should exercise its discretion by refusing a writ of mandamus where there is an alternative remedy which is equally convenient, beneficial and effective. [Sisters of Charity v. City of Vancouver, 44 Can. S.C.R. 29, referred to.]

Charleson v. Byrne, 22 D.L.R. 240, 21 B.C.R. 281, 8 W.W.R. 930, 31 W.L.R. 309.

D. TO COUNTY, TOWN OR MUNICIPAL OFFICERS.**(§ I D 1—25)—COMPELLING APPOINTMENT OF HOSPITAL BOARD.**

An application to compel a municipal corporation by mandamus to appoint a minority representation in a board of trustees in the management of a hospital, in pursuance of a provincial statute divesting the municipality from the control of the management, the property and funds whereof vested in the municipality under the terms of a charitable bequest, and where the appointments sought by the mandamus would otherwise prove futile, was dismissed by an equally divided Court.

The King v. Roach; Re Payzant Memorial Hospital, 25 D.L.R. 177.

(§ I D 2—35)—ILLEGAL DISMISSAL OF TAX OFFICER.

A municipality may be compelled by mandamus to restore one to the office of assistant assessor who has been dismissed without personal notice of the council meeting called to consider his dismissal.

The King v. City of Halifax; Re Stevens, 25 D.L.R. 113.

(§ I D 2—37)—ASSESSMENT OF TAXES—COMPELLING REVIEW OF.

A mandamus should not be granted to review the confirmation of a property assessment by the municipal Court of Revision unless the Court is satisfied that the decision of the lower Court was not made *bonâ fide* or was not based upon matters which it could legally take into consideration.

Charleson v. Byrne, 22 D.L.R. 240, 21 B.C.R. 281, 8 W.W.R. 930, 31 W.L.R. 309.

E. TO CORPORATIONS.**(§ I E—40)—TO BAR ASSOCIATION—ORDERING ADMISSION TO BAR.**

A petition for a "mandamus" ordering the Bar of the Province of Quebec to admit the petitioner among its members should be directed (1) to the Board of Examiners of the sections; (2) to the section itself; (3) to the general corporation.

Langstaff v. Bar of Quebec, 47 Que. S.C. 131.

II. Procedure; hearing; determination.**A. IN GENERAL; PREREQUISITES.****(§ II A—76)—MANDAMUS TO COMPEL HEARING OF APPEAL—AFFIDAVIT—BY WHOM MADE.**

One Hans Myhra laid an information before two Justices of the Peace against one Thomas Elliott alleging an improper dismissal from Elliott's employment, contrary to R.S.S. (1909), ch. 149, sec. 3, sub-sec. 2. The Justices having made an order against Elliott, he appealed to the Judge of the District Court of the Judicial District of Regina. When the appeal was called for hearing on November 10, 1914, objection was taken by counsel for Myhra that the money paid to the Justices as security pursuant to Criminal Code, sec. 750 (c), had not been paid into Court by the Justices, and thereupon the Judge dismissed the appeal with costs. The present application was made on behalf of Elliott for a writ of mandamus directed to the Judge of the District Court to set aside the order of dismissal and directing him to hear the appeal. The application was supported by an affidavit of Elliott's solicitor, but there was no affidavit of Elliott himself:—Held, that the word "prosecutor" in Crown Practice r. 25 means the applicant for a writ of mandamus; (2) that an affidavit in support of a writ of mandamus must be made by the applicant himself, and must shew that he has a real interest in the subject-matter; (3) that the filing of such affidavit is a condition precedent to the granting of the writ, and that this omission was more than a mere irregularity, and that leave should not on this application be granted to file an affidavit of the applicant.

Re Myhra & Elliott, 8 S.L.R. 21, 7 W.W.R. 1340.

MANDATORY.

Under Quebec law, see Principal and Agent; Brokers.

MANSLAUGHTER.

In general, see Homicide.

MARITIME LIENS.

Liens in general, see Liens.
See Admiralty; Seamen; Salvage; Shipping.

MARKETS.

Market values, see Damages.
As affecting carriers' rates, see Carriers; Railway Commission.

Annotation.

Private markets; Municipal control: 1 D.L.R. 219.

MARRIAGE.**I. IN GENERAL.****II. MODE OR FORM; VALIDITY GENERALLY.**

- a. In general.
- b. Common-law marriage.
- c. Effect of cohabitation or conduct.

III. CAPACITY OF PARTIES; WHO MAY MARRY.

- a. In general.
- b. Validation of marriage void when entered into.
- c. Miscegenation.

IV. ANNULMENT; TERMINATION.

- a. In general.
- b. For lack of capacity to marry.

As to bigamy, see Bigamy.
Breach of promise to marry, see Breach of Promise.

Separation and alimony, agreements relating thereto, see Divorce and Separation.
Custody and support of children, foreign decrees as to, see Infants; Parent and Child; Divorce and Separation.

Marriage contracts and settlements, see Husband and Wife.

Annotations.

Foreign common law marriage; validity: 3 D.L.R. 247.

Enemy alienage as affecting status of married women: 23 D.L.R. 375, 380.

I. In general.

(See previous Annual Digests.)

II. Mode or form; validity generally.**C. EFFECT OF COHABITATION OR CONDUCT.****(§ II C—11)—PRESUMPTION OF MARRIAGE.**

Where a man and woman have cohabited for such a length of time and in such circumstances as to have acquired the reputation of being man and wife, a lawful marriage between them will be presumed, although there may be no positive evidence of any marriage having taken place; and the pre-

sumption can be rebutted only by strong and weighty evidence to the contrary. [See Annotation in 3 D.L.R. 247.]

Johnston v. Hazen, 43 N.B.R. 154.

III. Capacity of parties; who may marry.

(See previous Annual Digests.)

IV. Annulment; termination.**B. FOR LACK OF CAPACITY TO MARRY.****(§ IV B—55)—PROHIBITED DEGREES OF CONSANGUINITY—EFFECT OF DEATH.**

The validity of a marriage voidable on the ground that the parties were within the prohibited degrees of consanguinity, such as uncle and niece, can only be questioned during the lifetime of both parties, and cannot be attacked by the next of kin of the deceased spouse. [Re Murray Canal; Lawson v. Powers, 6 O.R. 685; Kidd v. Harris, 3 O.L.R. 60, followed.]

Gray v. National Trust Co., 23 D.L.R. 608, 8 W.W.R. 1061, 31 W.L.R. 684.

(§ IV B—57)—INFANCY—LACK OF PARENT'S CONSENT.

Under the law of Alberta an action does not lie either by the girl's parent or by herself to annul her marriage at the age of sixteen under a marriage license obtained by the husband on a false and fraudulent affidavit as to her age and a ceremony performed without the parent's consent, and this although the marriage had never been consummated.

Burns v. Hills, 22 D.L.R. 74.

(§ IV B—57) — POWERS OF PROVINCIAL COURTS—INFANT MARRIAGES WITHOUT CONSENT.

The Supreme Court of Ontario has no power under sec. 36 of the Marriage Act, R.S.O. 1914, ch. 148, nor has it power otherwise to entertain actions affecting the validity of marriages entered into between persons of prohibited age without the required consent; and though it has power under sec. 16 (b) of the Judicature Act, R.S.O. 1914, ch. 56, to pronounce a declaratory judgment, that power is not applicable to such cases.

Peppiatt v. Peppiatt, 34 O.L.R. 121, 8 O.W.N. 447.

(§ IV B—57)—WANT OF PATERNAL CONSENT—JURISDICTION OF COURT TO ANNUL.

The Supreme Court of Alberta has no jurisdiction to declare a marriage null and void by reason of the want of the consent thereto of the father of one of the parties. [See T. v. B., 15 O.L.R. 224.] Notwithstanding the words, "The father, if living, of any person under 21 years of age . . . shall have authority to give consent to such marriage," a marriage between an infant and an adult without the consent of the father of the former is valid, the quoted words being merely directory. [R. v. Birmingham, 8 B. & C. 29, referred to.] Consent under sec. 11 of the Marriage Ordinance is a condition precedent to the grant of a marriage

license, but not to the marriage and failure to obtain such consent does not render the marriage void.

B. v. M., 7 W.W.R. 1197, 8 W.W.R. 110.

MARRIAGE SETTLEMENTS.

See Husband and Wife.

MARRIED WOMEN.

See Husband and Wife.

Relief Acts as to widows, see Descent and Distribution; Wills.

Annotation.

Enemy alienage as affecting status of married women: 23 D.L.R. 375, 380.

MASTER.

Review of findings, see Appeal.

Powers of, see Courts.

Provincial powers as to appointment, see Constitutional Law.

Annotation.

Constitutional law; appointment of Judges; Masters; powers of province as to appointment: 24 D.L.R. 18, 23.

MASTER AND SERVANT.

I. RIGHTS AND RELATIONS GENERALLY.

- A. In general; authority to employ servant or physician.
- B. When relation exists.
- C. Compensation; wages.
- D. Hours of labour.
- E. Termination of relation; discharge; enticing.

II. LIABILITY OF MASTER TO SERVANT.

- A. Nature and extent; master's duty.
- B. Servant's assumption of risks.
- C. Contributory negligence of servant.
- D. Disobedience of rules.
- E. Fellow-servants and their negligence.

III. LIABILITY OF MASTER TO STRANGERS FOR ACTS OF SERVANT OR INDEPENDENT CONTRACTOR.

- A. For acts of servant or agent.
- B. For acts of independent contractor.

IV. LIABILITY OF SERVANTS.

V. WORKMAN'S COMPENSATION; PROCEDURE.

Bond for fidelity of employee, see Bonds, II.

Employees of carrier as passengers, see Carriers, II.

Employer's liability insurance, see Insurance, VIII.

Embezzlement by servant, see Theft.

Lien of labourer, see Mechanics' Liens.

Maritime employment, see Seamen; Salvage; Shipping; Admiralty.

Limitation of actions generally, under Workmen's Compensation Acts, Railways and carriers, see Limitation of Actions.

Trial of actions, sufficiency of findings, see Trial; New Trial. Review of, see Appeal. Measure of damages, see Damages.

Rights of aliens generally, alien enemies and their beneficiaries, see Aliens.

Annotations.

Assumption of risks; superintendence: 11 D.L.R. 106.

Employer's liability for breach of statutory duty; assumption of risk: 5 D.L.R. 328.

Justifiable dismissal; right to wages (a) earned and overdue; (b) earned, but not payable: 8 D.L.R. 382.

Workmen's compensation; Quebec law; 9 Edw. VII. (Que.), ch. 66; R.S.Q. 1909, ss. 7321-7347: 7 D.L.R. 5.

Fraud of agent or employee; estoppel by conduct: 21 D.L.R. 13.

Rights of alien enemies to recover for injuries arising out of employment: 23 D.L.R. 375, 381.

I. Rights and relations generally.

C. COMPENSATION; WAGES.

(§ I C—10)—ILLNESS OF SERVANT—RIGHT TO WAGES.

A head waiter in a hotel is as a servant entitled to his wages or salary during absence through temporary illness, provided that the contract of service remains in existence during that time, and that he is ready and willing to carry out his duties save for the incapacity produced by the illness; but the illness of the servant may so go to the root of the consideration as to justify the master in rescinding the contract.

Montague v. G. T. P. R. Co., 23 D.L.R. 355, 25 Man. L.R. 372, 8 W.W.R. 528.

(§ I C—10)—REMUNERATION BASED ON "NET PROFITS."

Where a contract of hiring depends entirely on the "net profits" realized from sales which the employee has been directly or indirectly instrumental in making, the Court will not be astute to deprive the employee of such profits where it seems reasonably clear that they have been earned, and in determining the "net profits" a just proportion of the overhead charges of the business should be allocated to that quantum of business done in which the employee is to participate.

Whyte v. McTaggart, 22 D.L.R. 8, 31 W.L.R. 654.

(§ I C—10) — PER DIEM CHARGE — AGREEMENT.

Where at the time of the hiring the person hired told the employer what the per diem charge would be for the service, that should be the basis of compensation as constituting an agreement to pay that amount and not merely a quantum meruit, where the service was accepted and no variation of such compensation was discussed.

Bain v. Cochana, 23 D.L.R. 619.

(§ I C—10)—ACCOUNTING AS CONDITION PRECEDENT TO RECOVERY.

A manager, who on receipt of a notice of dismissal delivers to his employer his books

and everything which has been entrusted to him, is not obliged to render an account, when not demanded by the employer, before suing for his salary.

Gallagher v. Confer, 48 Que. S.C. 303.

(§ I C—10) — WAGES — WHAT CONSTITUTES — DIVISION OF PROFITS — TRUCK ACT.

Gaffo v. MacDonald, 24 D.L.R. 890, 32 W.L.R. 966.

(§ I C—10) — CONTRACT OF EMPLOYMENT — INFANT EMPLOYEE — WAGES — INCREASE IN — COUNTERCLAIM AND SET-OFF — FINDINGS OF FACTS.

Hogate v. Hogate, 24 D.L.R. 900, 31 W.L.R. 843.

(§ I C—10) — CONTRACT OF HIRING — SALARY — BONUS — DISMISSAL — REASONABLE NOTICE — DAMAGES IN LIEU OF.

Evans v. Fisher Motor Co., 8 O.W.N. 19.

(§ I C—13) — RIGHT TO WAGES UPON LEAVING EMPLOYMENT — JUST CAUSE — INFERIORITY OF FOOD.

Inferiority in the quality of food for which no reasonable opportunity to remedy the complaint is given by the servant to the master does not constitute a just cause for leaving the employment so as to entitle the servant to a recovery of wages for the unexpired term of employment.

Pratt v. Idsardi, 23 D.L.R. 257, 31 W.L.R. 541.

E. TERMINATION OF RELATION; DISCHARGE; ENTICING.

(§ I E—20) — ANNUAL CONTRACT — EFFECT ON BY INCREASE IN SALARY.

A contract for the hire of services of a manager a salary of \$2,700 a year payable in twelve monthly payments is a contract for one year. Nor is such contract annulled by the fact that the salary had been increased during the year.

Gallagher v. Confer, 48 Que. S.C. 303.

(§ I E—21) — NOTICE — MISCONDUCT.

The period of notice stipulated in a contract of employment or the proportionate remuneration in lieu thereof, in the event of a termination of the relationship upon a failure to carry out the duties in accordance with the contract, does not affect the master's right of dismissal without remuneration for any misconduct or a wilful breach of duty.

Buxton v. Lowes, 23 D.L.R. 848, 31 W.L.R. 768.

(§ I E—22) — GROUNDS — INSUBORDINATION.

A servant may be summarily dismissed if he is insulting and insubordinate to such a degree as to be incompatible with the continuance of the relation of master and servant.

Montague v. G.T.P.R. Co., 23 D.L.R. 355, 25 Man. L.R. 372, 8 W.W.R. 528.

(§ I E—22) — GROUNDS — DISOBEDIENCE OF INSTRUCTIONS — DISPOSITION OF BANK FUNDS.

A disregard by a manager of his master's

instructions as to the disposition of bank funds, over which the manager has a power of attorney, amounts to a misconduct which will justify his dismissal by the master.

Buxton v. Lowes, 23 D.L.R. 848, 31 W.L.R. 768.

(§ I E—25) — STATUTORY NOTICE OF DISMISSAL — RETROACTIVE OPERATION — REGULATION OF MUNICIPAL EMPLOYMENT.

A servant of the city of Edmonton, who is not employed under a by-law, is not, by virtue of a provision of the Edmonton Charter, entitled to any notice of dismissal or to any damages for the failure to give such notice, and it is immaterial whether or not the servant was employed before or after the enactment of the said provision. [Lawler v. City of Edmonton, 29 W.L.R. 661, followed.]

Hackett v. City of Edmonton, 30 W.L.R. 551.

(§ I E—25) — DISMISSAL OF SERVANT — CONTRACT OF HIRING — NOVATION — CHANGE IN EMPLOYER — INDEFINITE PERIOD — REASONABLE NOTICE — DAMAGES — COSTS.

Freeman v. Wright, 9 O.W.N. 171.

(§ I E—26) — DISMISSAL — WHAT CONSTITUTES — REVOCATION OF POWER OF ATTORNEY AS GROUND FOR QUITTING.

The revocation by a master of a power of attorney over bank funds given to his manager, and a disapproval of the latter's actions because of his disregard of the master's instructions, does not amount to a dismissal from service as to warrant the servant to quit the employment.

Buxton v. Lowes, 23 D.L.R. 848, 31 W.L.R. 768.

II. Liability of master to servant.

A. NATURE AND EXTENT; MASTER'S DUTY.

(§ II A 1—35) — DEATH OF SERVANT — NEGLIGENCE — EVIDENCE — FINDINGS OF JURY — MOTION FOR NONSUIT.

Christie v. London Electric Co., 7 O.W.N. 703.

(§ II A 1—35) — DEATH OF SERVANT — NEGLIGENCE — FINDINGS OF JURY — APPEAL — EVIDENCE — NONSUIT — BUILDING TRADES PROTECTION ACT, R.S.O. 1914, CH. 228, SEC. 6.

Stumpf v. Pulleyblank, 8 O.W.N. 1.

(§ II A 1—35) — INJURY TO SERVANT — NEGLIGENCE — FINDINGS OF JURY — DEFECTIVE SYSTEM — ABSENCE OF EVIDENCE TO SUPPORT — SUGGESTED GROUND OF ACTION — NEGLIGENT ORDER OF FOREMAN — WORKMEN'S COMPENSATION FOR INJURIES ACT, SEC. 3 (C), SEC. 14 — REFUSAL OF NEW TRIAL — DISMISSAL OF ACTION.

Caldarelli v. O'Brien, 9 O.W.N. 162.

(§ II A 2—46) — RAILWAY EMPLOYEES — RULES AND REGULATIONS — METHOD OF ADOPTION.

A railway company are not required to have every rule for the guidance of their

staff printed or reduced to writing; if their employees are aware of the existence and terms of any rule they are bound by it. [23 Que. K.B. 203, reversed.]

Canadian Pacific R. Co. v. Frechette, 22 D.L.R. 356, [1915] A.C. 871, 113 L.T. 1116, 31 W.L.R. 872, 18 Can. Ry. Cas. 251.

(§ II A 4-60) — STRUCTURAL WORKERS — SAFETY AS TO APPLIANCES.

Structural steel contractors in the erection of a building are properly found guilty of negligence in not providing guys or cinch lines or both, for the safety of their workmen on the structure.

Parkhurst v. Grant Smith & Co., 22 D.L.R. 94.

(§ II A 4-60) — EMPLOYMENT IN ELECTRIC WORKS—SAFETY—COMPETENT FOREMAN.

A workman engaged in painting on an electric transmission tower and who is injured by an electric shock from same after he had been assured by his employers' representatives that the place where he was to work was safe and that the wires on that part of the tower were dead, although other wires on the tower carried highly dangerous currents, proves a *prima facie* case of negligence against his employers, the electric power company, when he shews that his injuries were caused by a dangerous element under the company's control at a time and place where such element ought not to have been; and if the system adopted by the company did not afford a safe and proper place for the plaintiff to do his work, the company is not relieved from responsibility by the fact that the operations were superintended by a competent foreman. [*Ainslie Mining Co. v. McDougall*, 42 Can. S.C.R. 420; *Brooks-Scanlon v. Fakkema*, 44 Can. S.C.R. 412, and *Rylands v. Fletcher*, L.R. 3 H.L. 330, applied.]

Raynor v. Toronto Power Co., 22 D.L.R. 578, 32 O.L.R. 612, 7 O.W.N. 512.

[Reversed in 25 D.L.R. 340, 51 Can. S.C.R. 490.]

(§ II A 4-60) — DEATH OF SERVANT OF SHIPPING COMPANY BY BREAKING OF CABLE IN MOVING SHIP—NEGLIGENCE OF FOREMEN OF SHIPPING COMPANY AND RAILWAY COMPANY—FINDINGS OF JURY—DEFECTIVE PLANT—LENDING OF APPLIANCES AND MEN BY RAILWAY COMPANY TO SHIPPING COMPANY—GRATUITOUS BAILMENT—LIABILITY OF BOTH COMPANIES—CONTRIBUTION INTER SE.

MacTague v. Inland Lines, 8 O.W.N. 183.

(§ II A 4-65) — EXCAVATION WORK — DUTY TO ERECT BARRIERS.

Failure of a master to erect permanent barriers for the safe protection of workmen engaged in excavation work at a sloping hillside is actionable negligence, notwithstanding the master's adoption of means of removing the loose rock and material likely to come down. [*Wilson v. Merry*, L.R. 1 H.L. Sc. 326, distinguished; *Bergklint v. West. Can. Power Co.*, 50 Can. S.C.R. 39, referred to.]

Bergklint v. Western Canada Power Co., 24 D.L.R. 565, 9 W.W.R. 456, 32 W.L.R. 884.

(§ II A 4-66b) — INJURY TO EMPLOYEE FROM CONTACT WITH WIRE—PROPER PRECAUTIONS.

Where it appears that every reasonable precaution had been taken for the safety of employees and there being nothing from which it may be inferred that the accident was due to the negligence of some other person for which the master is liable, a power company is not responsible for injuries to an employee resulting from contact with an electric wire represented to be harmless but which had in some way become charged. [*Raynor v. Toronto Power Co.*, 22 D.L.R. 578, 32 O.L.R. 612, reversed.]

Toronto Power Co. v. Raynor, 25 D.L.R. 340, 51 Can. S.C.R. 490.

(§ II A 4-66b) — INJURY TO SERVANT—ELECTRIC SHOCK—NEGLIGENCE—FINDINGS OF JURY—VOLUNTARY ASSUMPTION OF RISK—FAULT OF FELLOW SERVANT—WORKMEN'S COMPENSATION FOR INJURIES ACT.

Jasper v. Toronto Power Co., 9 O.W.N. 191.

(§ II A 4-67) — DECAYED POLE—INJURY TO LINEMAN.

The decayed condition of a pole, undiscovered because of the master's negligent inspection, will render the master liable for the death of a lineman caused by his jumping from the pole as it appeared to be about to fall.

Christie v. London Electric Co., 23 D.L.R. 476, 33 O.L.R. 395, 8 O.W.N. 124.

(§ II A 4-67) — WORKMAN INJURED IN THE COURSE OF HIS EMPLOYMENT—NEGLIGENT SYSTEM — CONTRIBUTORY NEGLIGENCE—SELF-BALANCING LIFTS—TRAP.

Hatch v. Powell River Paper Co., 18 B.C.R. 1.

(§ II A 4-70) — DANGEROUS MACHINERY—INCOMPETENT MANAGEMENT—WANT OF SUPERVISION.

It is negligence on the part of employers to omit providing a proper system by which the dangerous character of the employment might be lessened, and in putting an incompetent man in charge of a dangerous machine, and keeping him there for part of the day and the whole of the night, without supervision or instruction. [*Choate v. Ontario Rolling Mill Co.*, 27 A.R. (Ont.) 155; *Jones v. C.P.R. Co.*, 5 D.L.R. 332, 13 D.L.R. 900, applied.]

Hull v. Seneca Superior Silver Mines, 24 D.L.R. 254, 33 O.L.R. 557, 8 O.W.N. 301.

(§ II A 4-71) — HOISTING MACHINERY — SELECTION OF APPLIANCES—QUESTION OF FACT FOR JURY.

Although a master is not bound to adopt all the latest improvements and appliances, the question as to whether proper safety appliances had been installed by a master to prevent the overwinding of hoisting machinery is one of fact for the jury, notwithstanding

ing the fact that the master entrusted the selection of such appliances to a competent man; and it is sufficient, for the finding of the jury, where the evidence points to several kinds of safety appliances, that the improper devices had been installed. [Paskwan v. Toronto Power Co., 15 D.L.R. 752, affirmed.]

Toronto Power Co. v. Paskwan, 22 D.L.R. 340, [1915] A.C. 734, 113 L.T. 353.

(§ II A 4-75) — MINING — EXPLOSION — STATUTORY DUTY OF MASTER.

A mining company owning and operating a mine is liable in damages to a miner employed by the contractor to whom the drilling operations had been let, for personal injury of such miner through an explosion on striking a missed hole which should have been blasted by the previous relay or shift, and of which no report was made to him when he went on duty, where the company's system was faulty in not making provision as required by the Mining Act for reporting from one relay of men to the next that a charged hole had not exploded and in not seeing that proper directions were given to have it exploded before continuing the drilling as required by the statutory mining rules, sec. 164 of the Mining Act (Ont.); the duties in that respect are imposed upon the company and it is not absolved from responsibility by having contracted out to another the operation of the drilling machine. [Grant v. Acadia Coal Co., 32 Can. S.C.R. 427; *Britannic, etc., Co. v. David*, [1910] A.C. 74; *Butler v. Fife Coal Co.*, [1912] A.C. 149; *Vancouver Power Co. v. Hounscome*, 19 D.L.R. 200, 49 Can. S.C.R. 430, referred to.]

Danis v. Hudson Bay Mines, 23 D.L.R. 455, 32 O.L.R. 335, 7 O.W.N. 365.

(§ II A 4-75) — MINES — HOLE CHARGED WITH DYNAMITE—WARNINGS.

An unexploded hole charged with dynamite left in a mine by the night shift without any report or warning as required by r. 14 of sec. 164 of the Mining Act, R.S.O. 1914, ch. 32, whereby a worker of the following shift, while engaged in his ordinary work, struck a protruding ledge of rock, causing an explosion, will render the master liable for the injuries he sustained thereby.

Doyle v. Foley-O'Brien Ltd., 22 D.L.R. 872, 34 O.L.R. 42, 8 O.W.N. 362.

[Affirmed by Can. Sup. Ct. December 29, 1915.]

(§ II A 4-75) — MINES — INFANT EMPLOYEE—SUPERVISION—VIOLATION OF WARNINGS.

The employment of a boy of 14 years of age to attend to the wire rope at the revolving drum of a hoisting gear of a mine is not such as to call for special supervision or special instruction where the drum was properly guarded and the work was properly boy's work if done by him where he was directed to do it outside of the guards, particularly where he had been specially warned of the danger of attempting to work

inside the guards and was injured by doing so in spite of the warning.

McSorley v. Dominion Coal Co., 22 D.L.R. 802, 48 N.S.R. 552.

(§ II A 4-75)—WORK IN MINES—INEXPERIENCED EMPLOYEE—WANT OF GUIDE.

Permitting an inexperienced employee to work alone at night on a dimly lighted deck of a mine, which required the taking of cars loaded with ore from the cage of a hoist, without having an experienced man to guide him in the work, affords reasonable grounds for a jury's finding, where the employee is later found dead below the deck even where nobody saw him fall, that the death was caused by the negligence and breach of statutory duty of the master.

Hull v. Seneca Superior Silver Mines, 24 D.L.R. 254, 33 O.L.R. 557, 8 O.W.N. 301.

(§ II A 4-75)—WORK IN MINES—STATUTORY REGULATIONS AS TO SAFETY.

Section 164, r. 45, of the Mining Act, R.S.O. 1914, ch. 32, prescribes the code of signals for raising or lowering a cage in the shaft of a mine, and r. 98 provides that the owner of a mine shall enforce and observe such care and precaution for the avoidance of accident or injury to any person in or about the mine as the particular circumstances of the case require, and that the machinery, plant, appliances, and equipment, and the manner of carrying on operations, shall always, and according to the particular circumstances of the case, conform to the strictest considerations of safety.

Hull v. Seneca Superior Silver Mines, 24 D.L.R. 254, 33 O.L.R. 557, 8 O.W.N. 301.

(§ II A 4-75)—WORK IN MINES—STATUTORY DUTY AS TO SAFETY—NEGLIGENCE OF FELLOW-SERVANT.

Failure of a mine-owner to maintain the mine in a condition suitable for carrying on the work with reasonable safety is followed by liability, even though the act which caused the injury may have been attributable to neglect of duty of a fellow-employee, and even though the owner employed competent officials for the superintendence of the mine, and required the statutory directions to be observed. [Grant v. Acadia Coal Co., 32 Can. S.C.R. 427; *G.T.R. Co. v. Griffith*, 45 Can. S.C.R. 380, applied.]

Hull v. Seneca Superior Silver Mines, 24 D.L.R. 254, 33 O.L.R. 557, 8 O.W.N. 301.

(§ II A 4-80) — INJURY TO SWITCHMAN — WANT OF PRINTED RULES—SPECIFIC FINDINGS.

The general finding of a jury that the injuries sustained by a switchman were caused by the negligence of the railway company is limited by a specific finding that the negligence consisted in not having definite printed rules and in not seeing that they are at all times strictly obeyed, and discloses no specific act of negligence on which an action at common law is maintainable.

Hile v. G.T.P.R. Co., 24 D.L.R. 9, 8 W.W.R. 403.

(§ II A 4—80)—INJURIES TO RAILWAY WORKMAN RETURNING FROM WORK.

A railway company is not responsible for the injuries sustained by its workmen while returning from work under the direction of their foreman to the sleeping accommodations provided by the company, since such injuries are not those arising in the course of their employment. [Sharpe v. C.P.R. Co., 19 D.L.R. 889, reversed.]

Sharpe v. C.P.R. Co., 23 D.L.R. 487, 33 O.L.R. 402.

(§ II A 4—80)—INJURY TO RAILWAY FIREMAN — CONFLICTING FINDINGS — NEW TRIAL.

In an action for damages for injuries sustained by a locomotive fireman employed by the defendants, by reason of the escape of steam from a valve in the locomotive engine, the jury found in answer to questions: (1) that the injuries of the plaintiff were caused by the negligence of the defendants; (2) that such negligence consisted in not seeing that the valve was properly closed; (3) in answer to the question, "Or were the plaintiff's injuries the result of his own negligence?"—"No"; (5) that the plaintiff by the exercise of reasonable care could have avoided the accident; (6) that he could have done so "by examining valve":—Held, that there was evidence proper to be submitted to the jury on all branches of the case; and (Riddell, J., dissenting) that the answers of the jury were conflicting, and there should be a new trial: r. 501 (1). Per Riddell, J.: "The reading of the answers most favourable to the plaintiff would be: 'We find that this accident was caused by the negligence of the defendants, and it could have been avoided by the plaintiff exercising reasonable care—but we do not call the omission to use that reasonable care negligence on the part of the plaintiff.' On the answers, the action should be dismissed."

Ball v. Wabash R. Co., 35 O.L.R. 84, 8 O.W.N. 544, 9 O.W.N. 258.

(§ II A 4—85)—DEATH OF SERVANT—ACTION BY ADMINISTRATOR UNDER FATAL ACCIDENTS ACT—NEGLIGENCE—RAILWAY—DECEASED WALKING ON TRACKS STRUCK BY TRAIN—FINDINGS OF JURY—NONSUIT—APPEAL.

Guardian Trust Co. v. Dominion Construction Co., 7 O.W.N. 611.

(§ II A 4—94a) — INJURY TO CONDUCTOR WHILE ADJUSTING TROLLEY—POLE NEAR TRACK.

In an action by a conductor of a municipal owned street railway for injuries sustained by colliding with a metal standard close to the track while adjusting the trolley pole, the fact of the close proximity of the standard otherwise properly constructed, or that because of the overcrowding of the vestibule he is compelled to leave it when adjusting the trolley pole, or the violation of rules of operation which are not pleaded,

does not support a jury's finding of negligence against the defendant.

Schell v. City of Regina, 24 D.L.R. 755, 8 S.L.R. 275, 31 W.L.R. 834.

(§ II A 4—97) — SAFETY APPLIANCES — AUTOMATIC COUPLERS — STATUTORY COMPLIANCE.

Section 264 of the Canadian Railway Act, 1906, imposing on railway companies the duty of equipping their cars with automatic couplers and with modern and efficient appliances, does not create an obligation to their employees to equip their cars with the very latest improved couplers immediately after they are put upon the market; and the equipment with couplers of 10 to 15 years' duration used extensively by other railways and approved by the railway commission is a sufficient compliance with the Act. [23 Que. K.B. 203, reversed.]

Canadian Pacific R. Co. v. Frechette, 22 D.L.R. 356, [1915] A.C. 871, 113 L.T. 1116, 18 Can. Ry. Cas. 251, 31 W.L.R. 872.

(§ II A 4—97) — SAFETY APPLIANCES — COUPLERS—FROZEN RELEASE—INJURIES TO EMPLOYEE UNCOUPLING.

A train equipped with approved coupling devices as required by sec. 264 (c) of the Railway Act, R.S.C. 1906, ch. 37, which had been inspected upon its arrival according to the usual practice and no apparent defects found, will not render a railway company liable for injuries to an employee sustained while uncoupling a car resulting from the formation of ice inside the coupler, preventing its operation, but which could not be visible from the exterior. [Phelan v. G.T.P. R. Co., 12 D.L.R. 347, 23 Man. L.R. 435, affirmed.]

Phelan v. G.T.P. R. Co., 23 D.L.R. 90, 51 Can. S.C.R. 113, 7 W.W.R. 1224, 18 Can. Ry. Cas. 233.

(§ II A 4—100) — COLLISION — INJURY TO RAILWAY EMPLOYEE—SIGNALS.

A railway company cannot relieve itself of all responsibility for the consequences of a collision by proving that it gave all the warnings required by the Railway Act. It is liable at common law, wholly or partially according to circumstances, when the employee in charge of the engine could by taking ordinary precautions have prevented the accident.

Demers v. C.P.R. Co., 48 Que. S.C. 186.

B. SERVANT'S ASSUMPTION OF RISKS.

(§ II B 1—125)—INJURY TO SERVANT WHILE REPAIRING BUILDING—DEFECTIVE CONDITION.

Although the owner of a building is responsible for the damage caused by what has happened on account of want of repair or by defect in construction, this responsibility cannot be invoked by one who having undertaken to remedy these defects falls a victim to them during his work.

Lambert v. L'Oeuvre, etc., de St. Jean, 48 Que. S.C. 312.

(§ II B 2—132)—WORK OF BRAKEMAN.

Held, that by hiring as a brakeman on a railway an employee does not undertake to assume the risk of an accident caused by the neglect of the company to take all necessary and legal precautions for the protection of its employees, and the company is liable in damages for an accident caused by such neglect.

Wentzell v. New Brunswick, &c., R. Co., 43 N.B.R. 475.

(§ II B 3—139) — DANGEROUS SCAFFOLD.

It is not inexcusable fault for an employer to order his workmen to build a scaffold on which they are to work if the workmen are reasonably competent and know the danger to which they will be exposed and consent to build and use the scaffold without having it examined by a carpenter.

Wall v. Cape, 24 D.L.R. 559, 24 Que. K.B. 38.

(§ II B 3—143)—INJURY FROM FALL OF MACHINERY IN SMELTER—VOLUNTARY ASSUMPTION OF RISK—RES IPSA LOQUITUR—APPLICABILITY.

Meagher v. Granby Consolidated, 24 D.L.R. 892, 9 W.W.R. 37, 32 W.L.R. 334.

(§ II B 3—146) — MINING — VOLENS — MASTER'S BREACH OF STATUTORY DUTY.

The maxim *volenti non fit injuria* is not applicable in relief of a defendant guilty of a violation of a statutory duty such as is imposed by the Mining Act, R.S.O. 1914, ch. 32. [McClemon v. Kilgour Co., 8 D.L.R. 148, 27 O.L.R. 305, applied.]

Danis v. Hudson Bay Mines, 23 D.L.R. 455, 32 O.L.R. 335, 7 O.W.N. 365.

[Affirmed by Can. Sup. Ct. February 1, 1916.]

(§ II B 4—161) — COUPLING CARS — KNOWLEDGE OF DANGER—VIOLATION OF RULES.

On the principle of *volens*, a brakeman is not entitled to recover from a railway company for personal injuries he sustained while uncoupling cars where, with full knowledge of the risk and in violation of the company's rules, he goes between the cars while in motion for the purpose of uncoupling them. [23 Que. K.B. 203, reversed.]

Canadian Pacific R. Co. v. Frechette, 22 D.L.R. 356, [1915] A.C. 871, 113 L.T. 1116, 31 W.L.R. 872, 18 Can. Ry. Cas. 251.

(§ II B 7—180) — NEGLIGENCE OF FELLOW SERVANT—ACTING IN PLACE OF FOREMAN.

That a fellow workman as the senior and more experienced of those employed in painting a building had assumed in the temporary absence of the foreman to give directions to a fellow employee, will not support an action in negligence under the Employers' Liability Act, R.S.M. 1913, ch. 61, against the employer in respect of such directions where in fact the employees were upon an equal status. [Garland v. Toronto, 23 A.R. (Ont.) 238, applied; Shea v. Inglis, 11 O.L.R. 124, distinguished.]

Hill v. Carter-Halls Aldinger Co., 21 D.L.R. 570, 25 Man. L.R. 145, 7 W.W.R. 1024, 30 W.L.R. 365.

C. CONTRIBUTORY NEGLIGENCE OF SERVANT.

(§ II C 1—185)—INJURY TO LINEMAN CLIMBING POLE—DISREGARD OF PRACTICE.

The disregard by a lineman of a practice, not a rule, in not ascending an old pole before it was lashed to the new pole is not in itself contributory negligence to warrant a withdrawal of the case from the jury. [Randall v. Ahearn & Soper, 34 Can. S.C.R. 698, applied.]

Christie v. London Electric Co., 23 D.L.R. 476, 33 O.L.R. 395, 8 O.W.N. 124.

(§ II C 1—191)—UNEXPLODED HOLE IN MINE—FAILURE TO LOOK.

The fact that an employee in a mine did not look to see whether or not a hole charged with dynamite was unexploded, does not establish contributory negligence in bar of his action for personal injuries, where there were no warnings leading him to such inquiry.

Doyle v. Foley-O'Brien, 22 D.L.R. 872, 34 O.L.R. 42, 8 O.W.N. 362.

[Affirmed by Can. Sup. Ct. December 29, 1915.]

(§ II C 2—198)—INJURIES TO SWITCHMAN—DEFECTIVE ENGINE—UNAUTHORIZED USE—PROXIMATE CAUSE.

There can be no recovery either at common law or under the statute where the real and basic cause of an accident and the resultant injuries to a switchman is the unauthorized taking and using of an untested and defective engine by the switching crew whom he voluntarily assisted in the taking and using of the engine with knowledge of its defective condition.

Hile v. G.T.P. R. Co., 24 D.L.R. 9, 8 W.W.R. 403.

(§ II C 2—199) — UNPROTECTED FROG — UNCOUPLING CARS IN MOTION.

An unprotected frog is not of itself negligence where the deceased met his death in an attempt to uncouple cars while in motion, unless his duties required him to do so.

Western Trust Co. v. Regina (City), 24 D.L.R. 28, 32 W.L.R. 307.

D. DISOBEDIENCE OF RULES.

(§ II D—206)—INJURY TO SERVANT BOARDING MOVING TRAIN CONTRARY TO RULES.—PROXIMATE CAUSE.

The premature starting of a train without ascertaining that all the train-crew were aboard will not render the Crown liable for injuries sustained by an employee on its railway, where the accident resulted from an attempt to board the train while in motion in violation of a Crown regulation.

Turgeon v. The King, 25 D.L.R. 475, 51 Can. S.C.R. 588, affirming 15 Can. Ex. 331.

E. FELLOW-SERVANTS AND THEIR NEGLIGENCE.

(§ II E 1—210)—INJURY TO SERVANT—NEGLECT—FINDINGS OF JURY—EVIDENCE—INCOMPETENCE OF FELLOW-SERVANT—COMMON EMPLOYMENT.

Ballantyne v. Eansor & Co., 8 O.W.N. 297, 9 O.W.N. 26.

(§ II E 5—250) — INJURY TO BRAKEMAN STANDING ON GANGWAY OF LOCOMOTIVE— NEGLIGENCE OF FELLOW SERVANT.

The personal injuries received by the plaintiff, a front-end brakeman, while in the performance of his duty standing on the gangway between the locomotive and tender, looking for signals on the approach to a station, and observing if there were any hot boxes in the trucks of the cars, by being knocked from the train in stepping backward, by a poker in the hands of the fireman, and run over by it, were not due to the negligence of the defendants at common law, or the use of an alleged dangerous system by them.

McIntyre v. G.T.R. Co., 18 Can. Ry. Cas. 160, 6 O.W.N. 618.

(§ II E 5—250)—INJURY TO SERVANT—RAILWAY — "HOSTLER'S HELPER" — NEGLIGENCE OF FELLOW-SERVANT—EMPLOYMENT OF INCOMPETENT PERSON—FINDINGS OF JURY.

Levack v. C.P.R. Co., 8 O.W.N. 270.

(§ II E 6—275)—SERVANTS AT PLAY—INJURY TO FELLOW SERVANT.

If some servants leave their work and indulge in "larking" to the injury of a fellow servant, that does not infer liability on the employer for damages at common law or under the Employers' Liability Act, N.S., or the Workmen's Compensation Act, 1910, N.S., ch. 3. [*Armitage v. Lancashire & Yorkshire R. Co.*, [1902] 2 K.B. 178; *Fitzgerald v. Clarke*, [1908] 2 K.B. 796, applied.]

Doyle v. Moirs Ltd., 22 D.L.R. 767, 48 N.S.R. 473.

[Leave to appeal to Privy Council refused, March 27, 1915.]

III. Liability of master to strangers for acts of servant or independent contractor.

A. FOR ACTS OF SERVANT OR AGENT.

(§ III A 2—290)—RECKLESS DRIVING—HIRED TEAM.

A driver furnished by a liveryman with the hiring of a team who assists in the work of the hirer and operates, except as to driving, under the latter's directions, will, in the event of an accident resulting from reckless driving, render the liveryman, not the hirer, liable for damages resulting therefrom. [*Consolidated Plate Glass Co. v. Caston*, 29 Can. S.C.R. 624, followed.]

Balfour v. Bell Telephone Co., 24 D.L.R. 395, 34 O.L.R. 149, 8 O.W.N. 472.

IV. Liability of servants.

(See previous Annual Digests.)

V. Workman's compensation; procedure.

(§ V—340)—CONSTRUCTION OF STATUTE— ANNUITIES—CAPITAL RENT.

The provision in sub-head 2 of art. 7322 of the Quebec Workmen's Compensation Act, that "the capital of the rents," claimed in cases of total or partial incapacity, "shall not exceed the sum of \$2,000," does not govern the amount of rent where it is claimed from the employer himself, but derives its meaning from the subsequent art. 7329, which gives the injured person or his representatives the option to demand that the capitalised value of the rent shall be paid over to an approved insurance company which will provide an annuity in lieu thereof. [*G.T.R. Co. v. McDonald*, 5 D.L.R. 65, 21 Que. L.R.K.B. 532, followed; 16 D.L.R. 830, 49 Can. S.C.R. 163, affirmed.]

Canadian Pacific R. Co. v. McDonald, 23 D.L.R. 1, [1915] A.C. 1124, 24 Que. K.B. 495,

(§ V—340)—CAPITAL RENT.

Where under the Workmen's Compensation Act (art. 7321, R.S.Q. 1909) a workman who has been injured does not ask for the deposit of the capital sum, he is entitled to a rent the capital of which may exceed \$2,000.

Canadian Pacific R. Co. v. Flore, 24 D.L.R. 710, 24 Que. K.B. 55.

(§ V—340)—SUSPENSION FROM WORK.

A workman who is paid by the hour for his work, but who is laid off temporarily through no fault of his, and who is afterwards recalled and resumes his work, is entitled to estimate the amount he would have earned had he not been laid off, and add it to the amount actually received in order to show that the Workmen's Compensation Act does not apply, and that he is entitled to bring his action under the common law.

Reynolds v. Can. Light & Power Co., 25 D.L.R. 237, 48 Que. S.C. 500.

(§ V—340)—REDEMPTION OF WEEKLY PAYMENTS—MODE OF ASCERTAINMENT.

In estimating the total amount of compensation to be awarded in redemption of future weekly payments under the Workmen's Compensation Act, the amount should be based on the state of health and the probable expectation of life of the injured person at the time of the inquiry on the application for redemption, without any deduction of the antecedent payments, though agreed upon by counsel of the respective parties. [*Victor Mills, Ltd. v. Shackleton*, [1912] 1 K.B. 22, followed.]

Dutka v. Bankhead Mines, 23 D.L.R. 273, 8 W.W.R. 1041, 31 W.L.R. 687.

(§ V—340)—PERMANENT AND PARTIAL DISABILITY.

In determining the question of permanent incapacity under the Workmen's Compensation Act (Que.), whether partial or total, it must be taken in consideration what the injured could earn before the accident and the earning capacity after the accident, but the fact that the injured's earnings since the

accident are as much as before is not conclusive on his ability to do the work, if his work is intermittent and the rate of his earnings varies according to the kinds of work he is engaged in.

Lariviere v. Girouard, 24 D.L.R. 532, 24 Que. K.B. 154.

(§ V-340) — AMPUTATION OF THUMB — PARTIALLY PERMANENT INCAPACITY.

The Workmen's Compensation Act is an Act of public order, and every agreement to the effect that the employer should be relieved of the obligation imposed upon him by this Act is a nullity *de plein droit*.

Girard v. Naud, 48 Que. S.C. 429.

(§ V-340) — PERMANENT AND PARTIAL INCAPACITY — DIMINUTION IN SALARY.

The Workmen's Compensation Act granting, in case of permanent and partial incapacity, a rent equal to half the sum by which the wages have been reduced in consequence of the accident, it is the duty of the Court to ascertain the corresponding decrease in the salary; and where the accident caused only a slight incapacity which does not expose the victim to any diminution in his salary, he has no claim to an indemnity for permanent and partial incapacity.

Stack v. Whittall, 48 Que. S.C. 272.

(§ V-340) — WORKMEN'S COMPENSATION — TEMPORARY TOTAL INCAPACITY — PERMANENT PARTIAL INCAPACITY — R.S.Q. 1909, ARTS. 7322, 7346.

Bonneau v. Sevigny, 25 D.L.R. 855, 47 Que. S.C. 129.

(§ V-340) — INJURY IN COURSE OF EMPLOYMENT.

An accident caused by the tortious act of a fellow workman having no relation whatever to the employment, cannot be said to arise "out of and in the course of the employment" under the Workmen's Compensation Act, 1910, N.S., ch. 3, sec. 5. [*Challis v. London & S.W.R. Co.*, [1905] 2 K.B. 154, distinguished.]

Doyle v. Moirs, 22 D.L.R. 767, 48 N.S.R. 473.

[Leave to appeal to Privy Council refused, March 27, 1915.]

(§ V-340) — INJURIES IN COURSE OF EMPLOYMENT.

An accident cannot be said to have happened by reason of or in the course of his work, so as to make a claim under the Workmen's Compensation Act (Que.), where the employee, without the knowledge or permission of the employer, goes to a place where he is forbidden to go, and meets with an accident while there.

Lavery v. G.T.R. Co., 24 D.L.R. 522, 48 Que. S.C. 278.

(§ V-340) — COMMUNICATION OF DISEASE WHILE REMOVING CINDER FROM FELLOW-SERVANT'S EYE — COURSE OF EMPLOYMENT.

Where an infectious disease is communicated to a workman by his fellow-workmen

while trying to remove a piece of cinder which had got into his eye while he was at work, and such disease results in blindness, the accident may be said to have happened in the course of his employment so as to entitle him to compensation under art. 7321, R.S.Q. 1909.

Canadian Pacific R. Co. v. Flore, 24 D.L.R. 710, 24 Que. K.B. 55.

(§ V-340) — INJURY TO TEAMSTER — IN OR ABOUT PLANT.

Compensation may be allowed under the Workmen's Compensation Act, N.S., in respect of injury to a teamster while driving a truck and team of horses in the delivery of the output of the factory although at some distance therefrom, the horses and truck being a part of the factory "plant" under the extended meaning given by sub-sec. 2 of sec. 2 to the word "factory," so that an injury "on, in or about" any part of the plant is within the statute. [*Yarmouth v. France*, 19 Q.B.D. 647, and *Carter v. Clarke*, 14 Times L.R. 172, applied.]

O'Toole v. Brandram-Henderson, 21 D.L.R. 83, 48 N.S.R. 293.

(§ V-340) — INJURIES WHILE CHANGING CLOTHES — COURSE OF EMPLOYMENT.

A workman who was injured by the collapse of temporary stairs on which he was proceeding a few minutes before the hour for commencing his day's work to another floor for the purpose of changing into his working clothes left there on the previous day, is entitled to compensation as for an injury arising out of his employment under the Workmen's Compensation Act, Alta. [*Plumb v. Cobden Flour Mills Co.*, [1914] A.C. 62, referred to.]

Klukas v. Thompson & Co., 21 D.L.R. 312, 7 W.W.R. 1102.

[Reversed in 24 D.L.R. 67.]

(§ V-340) — INJURY TO ONE EMPLOYED TO PAINT HOMESTEAD.

A painter employed to paint a homestead is precluded by the provisions of sec. 10 of the Workmen's Compensation Act from recovering compensation for injuries sustained at that work.

Smid v. Townsend, 8 W.W.R. 474.

(§ V-340) — DEATH WHILE MOVING BUILDING.

The death of a workman employed by a contractor for moving a building who loses his life in consequence of an accident comes under the application of the Workmen's Compensation Act, the moving having relation to the industry carried on in the building.

Desilets v. Laplante, 48 Que. S.C. 385.

(§ V-340) — DROWNING WHILE RETURNING FROM WORK.

A workman who, at the end of his day's work, embarks in a boat not belonging to his employer nor under his control to return to his home, and who is drowned en route, is not the victim of an accident within the application of the Workmen's Compensation

Act; and his widow and children have no recourse against his employer.

Menard v. Quinlan, 47 Que. S.C. 115.

(§ V-340)—INDUSTRIAL OPERATIONS—LUMBERING.

The cutting of wood in the forest by lumbermen does not constitute an industrial operation to which the Workmen's Compensation Act applies.

Michaud v. Tremblay, 48 Que. S.C. 289.

(§ V-340)—INDUSTRIAL WORK—SHOP FOR REPAIRING GOODS OF MANUFACTURER—LOADING.

A merchant, who keeps a workshop only for the repair of damaged furniture which he receives from a manufacturer, is not an industrial workman subject to the operation of the Workmen's Compensation Act. The operations of loading and unloading only fall within the operation of the Act in so far as they are performed as an enterprise by persons who make it their business. But the loading by a merchant of goods which form the object of his business for delivery to his customers does not constitute an enterprise of loading.

Labbé v. Comp. Julien, 48 Que. S.C. 322.

(§ V-340)—ILLNESS CONTRACTED IN COURSE OF WORK.

In actions under the Workmen's Compensation Act the burden of proof is upon the plaintiff of proving the application of the Act. The Act is not applicable when the workman suffers not from the accident but on account of an illness which had been contracted in the course of his work.

Pencis v. Girard, 47 Que. S.C. 406.

(§ V-340)—SERIOUS NEGLIGENCE OF SERVANT—AFTER-CONDUCT.

Sec. 6 (2) (c) of the Workmen's Compensation Act (B.C.) refers to the exemption from liability through an injury to a workman attributable to his serious neglect at the time of the accident, and does not apply to the after-conduct of the injured in his neglect to treat the injuries sustained.

Powell v. Crow's Nest Pass Coal Co., 23 D.L.R. 57, 8 W.W.R. 1086, 32 W.L.R. 218.

[Affirmed in 26 D.L.R.]

(§ V-340)—INJURY TO EYE—AGGRAVATION—INJURED'S NEGLIGENCE TO TREAT.

The neglect of an injured servant to treat an injury to his eye does not affect the liability of the employer, unless it has aggravated the injury so that the condition of the injured is no longer due to the injury caused by the accident, but arises from the neglect or unreasonable conduct of the injured.

Powell v. Crow's Nest Pass Coal Co., 23 D.L.R. 57, 8 W.W.R. 1086, 32 W.L.R. 218.

[Affirmed in 26 D.L.R.]

(§ V-340)—IMPROPER MEDICAL TREATMENT—AGGRAVATION OF INJURY.

The liability of the employer under the Workmen's Compensation Act extends not only to the consequences of the accident but to everything that relates thereto and can

be considered as an immediate result of it. Thus the aggravation produced by a fall of the workman when he is being carried to his home, or by the error of the physician or the surgeon called in to attend him or by one of the results inherent to every illness and every injury, should be considered as a consequence of the accident as rendering the employer liable. An employer, who agrees that the injured workman shall be subjected to irregular treatment, cannot afterwards complain of its non-success and seek to relieve himself from responsibility on account of it. Such would be the case when a workman having broken his leg the employer agrees to his treatment by an unlicensed practitioner.

Pelletier v. Lachance, 47 Que. S.C. 526.

(§ V-340)—DEFECTIVE CEILING—INEXCUSABLE FAULT.

The failure to remove a defective part of a ceiling deemed not dangerous while repairing it, though constituting negligence, does not amount to inexcusable fault of the employer under the Workmen's Compensation Act, art. 7325, R.S.Q. 1909, as rendering the employer liable to an increase of the amount of compensation for injuries to an employee resulting from a fall of the plaster.

Dougan v. Auer Incandescent Light Manuf. Co., 25 D.L.R. 429, 24 Que. K.B. 188.

(§ V-340)—INJURY TO SERVANT RUNNING DANGEROUS ELEVATOR—INEXCUSABLE FAULT—EARNING POWER.

When an employee is working at an elevator offering danger for him while running, and a representative of his employer at his demand undertakes to arrange with the person in charge of the building to have it stopped, and that the employee, although the elevator did not stop, continues his work, and gets injured, he is not nevertheless guilty of an inexcusable fault under the Workmen's Compensation Act. The fact that an employee injured and seeking relief under that Act, has found employment after the accident at his former rate of pay, is not a decisive proof that his earning power has not been diminished.

Peterson v. Garth Co., 24 Que. K.B. 165.

(§ V-340)—RAILWAY SWITCHMAN FALLING BENEATH MOVING CAR—INEXCUSABLE FAULT.

A switchman of a railway company, who in order to reach more quickly the place where he works, mounts on a car platform and on reaching the switch which he was to operate, falls beneath the moving car and is fatally injured, is not guilty of an inexcusable fault by which he loses the benefit of the provisions of the Workmen's Compensation Act.

Pepin v. G.T.R. Co., 47 Que. S.C. 223.

(§ V-340)—APPRENTICE—RECOURSE UNDER STATUTE.

The recourse given under the terms of art. 7321, R.S. 1909, depends upon the existence of an express or implied contract

between the victim and the party against whom the demand is directed, and the plaintiff must prove such contract.

Wilston v. G.T.R. Co., 47 Que. S.C. 67.

(§ V-340)—PARENT'S RIGHT TO INDEMNITY—CHILD NO MEANS OF SUPPORT.

A father, whose son was drowned by the fault of a navigation company for which he worked, but who was not his sole means of support, cannot maintain action against the latter for indemnity under the Workmen's Compensation Act, but he may hold it liable in damages by the application of art. 1056 C.C.

Laflamme v. Levis Ferry, 47 Que. S.C. 291.

(§ V-340)—RIGHTS OF PARENTS TO RECOVER FOR DEATH OF CHILD—COMMUNITY MAINTENANCE.

The right to maintenance is a claim attached to the person itself of the consorts, and the fulfilment of this obligation can be demanded, by either or both of them, for one of their children, when they are in community; but it does not follow that the obligation to furnish maintenance is a debt due to their community of property. Thus a wife in community as to property can, with her husband, bring an action for indemnity under the Workmen's Compensation Act on account of the death of their son, this action being of the nature of a demand for maintenance.

Sullivan v. Furness Withy, 47 Que. S.C. 289.

(§ V-340)—NOTICE OF INJURY—ELECTION OF REMEDIES.

The fact that a notice of injury served on the employer is headed as being in the matter of the Workmen's Compensation Act, 1908, Alta., and also with the words "application for compensation," are not sufficient to constitute a definite election on the part of the workman to take his remedy under the Compensation Act alone and to abandon his common law remedy for negligence where no such inference could be drawn from the statements contained in the notice itself apart from the headings.

Klukas v. Thompson & Co., 24 D.L.R. 67, 8 W.W.R. 778, 31 W.L.R. 438, reversing 21 D.L.R. 312, 7 W.W.R. 1102.

(§ V-340)—ELECTION OF REMEDIES—WORKMEN'S COMPENSATION OR LORD CAMPBELL'S ACT.

Held, that plaintiff was not bound to elect at the trial whether he would proceed under the Workmen's Compensation Act or under the Act Respecting Compensation to Relatives of Persons Killed by Wrongful Act, C.S. 1903, ch. 79, but the action could be brought and proceeded with under both Acts, and the damages could be assessed under either Act as the evidence might warrant.

Wentzell v. New Brunswick &c. R. Co., 43 N.B.R. 475.

(§ V-340)—FAILURE TO ESTABLISH COMMON LAW LIABILITY—LEAVE TO PROCEED UNDER STATUTE.

This was an action brought by an employee of the defendant company for damages at common law and under the Employers' Liability Act. Judgment was entered for the defendant by the trial Judge, and counsel for the plaintiff then asked the Judge to make an order that this judgment should be without prejudice to his rights to apply for compensation under the Workmen's Compensation Act, as he wished to appeal to the Court of Appeal from the Judge's decision, entering judgment against him. Gregory, J., said that there seemed to be no doubt that plaintiff should elect to appeal or apply for compensation under the Workmen's Compensation Act at the conclusion of the trial, and that there was "considerable merit" in the plaintiff's position, and that therefore he would gladly do anything in his power to assist him, but was not justified in endeavouring to circumvent the statute, but that if the formal judgment was returned to him, he would sign it as settled by consent if he could fairly do so.

Lilja v. Granby Consolidated, 8 W.W.R. 690.

(§ V-340)—INJURY TO SERVANT—FALLING INTO ELEVATOR SHAFT—NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—REMEDY—WORKMEN'S COMPENSATION—POWER OF COURT TO DETERMINE LIABILITY.

Garment v. Charles Austin Co., 25 D.L.R. 833, 34 O.L.R. 417, 9 O.W.N. 47.

(§ V-340)—PRELIMINARIES—PETITION TO SUE.

The petition for authority to sue under the Workmen's Compensation Act is the act preliminary to an action.

Fontaine v. Cabana, 48 Que. S.C. 230.

(§ V-340)—WRIT OF SUMMONS—FAILURE TO SERVE—NEGLIGENCE OF SOLICITORS—RENEWAL AFTER EXPIRY OF YEAR—POWER OF JUDGE OR MASTER IN CHAMBERS—ACTION UNDER WORKMEN'S COMPENSATION FOR INJURIES ACT—EXPIRY OF STATUTORY PERIOD—BAR TO NEW ACTION—DISCRETION.

Travato v. Dominion Cannery, 9 O.W.N. 7, 15.

(§ V-340)—REVIEW OF PROCEEDINGS UNDER ACT—APPEAL—DISCRETIONARY MATTERS.

No motion by way of appeal or application to the equitable jurisdiction of the Court to correct an error in a matter before a Judge acting within his jurisdiction under the Workmen's Compensation for Injuries Act will be entertained, except where the amount allowed the claimant is greater than is provided by the Act. On the hearing of a petition under the Act the Judge may, in the exercise of his discretion, apply any of the rules of the Supreme Court, 1909, which he may consider applicable to the circumstances of the case, and is not confined to

rules ejusdem generis with the subjects dealt with by the rules especially referred to in the Act.

Merritt v. St. John R. Co., 42 N.B.R. 667.

(§ V-340)—INDEMNITY, HOW ESTABLISHED.

In order to succeed upon a claim for indemnity against an award under the Workmen's Compensation Act, it must be established that the damages are paid by reason of and for the liabilities enumerated in the Act.

Atkinson v. Pac. Stevedoring and Contracting Co., 24 D.L.R. 400, 32 W.L.R. 154, 8 W.W.R. 1339.

(§ V-340) — INDEMNITY AWARDS — THIRD PARTIES—CONSENT.

An award for a lump sum under the Workmen's Compensation Act (B.C.) cannot be made under sec. 10, without the acquiescence of all parties in the character of compensation, and no award for indemnity against a third party in respect of the liability may therefore be made without the latter's consent.

Atkinson v. Pac. Stevedoring and Contracting Co., 24 D.L.R. 400, 32 W.L.R. 154, 8 W.W.R. 1339.

(§ V-340)—POWER TO AWARD—VOLUNTARY ADMISSION OF PARTIES.

Unless the employment is within the purview of the Workmen's Compensation Act (B.C.), and properly established, the Court has no jurisdiction under the Act to award compensation merely upon the voluntary admission of the parties to such award in an action for negligence.

Atkinson v. Pac. Stevedoring and Contracting Co., 24 D.L.R. 400, 32 W.L.R. 154, 8 W.W.R. 1339.

(§ V-340)—FINDINGS OF ARBITRATOR — REVIEW.

The Workmen's Compensation Act (B.C.) only enables the arbitrator to state a case for a decision on a question of law, and where the arbitrator finds only upon the facts his findings are not open to review, unless there is no evidence to support them. [*Armstrong v. St. Eugene*, 13 B.C.R. 385; *Ferguson v. Green*, [1901] 1 K.B. 25, referred to.]

Powell v. Crow's Nest Pass Coal Co., 23 D.L.R. 57, 8 W.W.R. 1086, 32 W.L.R. 218. [Affirmed in 26 D.L.R.]

MATERIALMEN.

Lien of, see Mechanics' Liens.

MATURITY.

Of notes, see Bills and Notes.

MAXIMS.

See also Words and Phrases.

(§ I-1)—PRESUMPTION OF RIGHT AND NOT WRONG.

It is a maxim of the law to give effect to everything that appears to have been established for a considerable course of time and

to presume that what has been done was done of right and not of wrong. [*Doe d. Murphy v. Mulholland*, 2 O.S.U.C. 115.]

Berard v. Bruneau, 22 D.L.R. 83, 25 Man. L.R. 400, 8 W.W.R. 635.

MECHANICS' LIENS.

I. CONSTRUCTION AND VALIDITY OF STATUTES.

II. THE RIGHT; WHEN LIEN EXISTS.

III. PRIORITIES.

IV. FOR WHAT WORK OR MATERIALS.

V. TO WHAT PROPERTY ATTACHES.

VI. OF SUB-CONTRACTORS AND MATERIALMEN.

VII. HOW WAIVED OR DEFEATED.

VIII. ENFORCEMENT; PROCEDURE.

For liens in general, see Liens.

Woodmen's liens, see Logs and Logging.

Maritime liens, see Seamen; Salvage; Shipping; Admiralty.

Annotations.

Percentage fund to protect sub-contractors: 16 D.L.R. 121.

What persons have a right to file a mechanic's lien: 9 D.L.R. 105.

I. Construction and validity of statutes.

(§ I-1)—"PREJUDICED"—"UNJUSTLY MADE TO SUFFER."

The word "prejudiced" as used in sec. 14 of the Mechanics' Lien Act, Alta., validating certain liens where there has been failure to strictly comply with the statute, means "unjustly made to suffer."

Rendall, Mackay, Michie v. Warren & Dyett, 21 D.L.R. 801, 8 W.W.R. 113.

II. The right; when lien exists.

(§ II-5)—STATUTORY LIEN FUND—RIGHTS OF OWNER.

The statutory amount of payment which the owner may retain by virtue of sec. 11 (1) of the Mechanics' Lien Act, R.S. Sask., ch. 150, forms a fund available for the lienholders only, to which the owner cannot resort as security against or to make good any loss occasioned by the non-compliance of the contract. [*Russell v. French*, 28 O.R. 215; *Rice Lewis & Sons v. Harvey*, 9 D.L.R. 114, followed.]

Peart Bros. Hardware Co. v. Battell, 23 D.L.R. 193, 8 S.L.R. 305, 8 W.W.R. 1159, 31 W.L.R. 956.

(§ II-5)—LANDS OF DIFFERENT OWNERS—"LIEN HOLDER"—WHO IS.

The Mechanics' and Wage Earners' Lien Act, R.S.M. 1913, ch. 125, does not authorize the registration of one lien for one lump sum against the lands of different owners, although the work may have been done or the materials furnished under one contract for the building of houses on the lands of the different owners, unless, perhaps, in a case where the lien claimant did not know and had no means of ascertaining before filing

his lien, that the lands were owned by different persons. [Fairclough v. Smith, 13 Man. L.R. 509; Oldfield v. Barbour, 12 P.R. 554, and Dunn v. McCallum (1907), 14 O.L.R. 249, followed. Ontario Lime Ass'n v. Grimwood, 22 O.L.R. 17, distinguished.] The expression "lien holder," in sec. 33 of the Act, means a person having a lien which was valid at the time of commencing his action, so that when, in an action commenced by a lien claimant, it is decided that he had no valid lien and no action was commenced within the time prescribed by sec. 22 of the Act by any other person claiming a lien on the same property, all the liens upon it must fail. [Sear v. Woods, 23 O.R. 474, followed.]

Builders Supply Co. v. Huddleston, 25 Man. L.R. 718.

(§ II-5)—KNOWLEDGE OF CONSTRUCTION—NOTICE—STATUTORY REQUEST.

In sec. 11, the Mechanics' Lien Act, ch. 21, 1906, which provides that "every building . . . constructed upon any lands with the knowledge of the owner . . . shall be held to have been constructed at the request of such owner . . . unless such owner . . . shall within three days after he shall have obtained knowledge of the construction . . . give notice that he will not be responsible for the same by posting or writing to that effect in some conspicuous place upon said land or upon the building or other improvement thereon," it is knowledge of the fact of construction and not knowledge of the intention to construct which gives rise to the statutory request created by this section. Where an owner of land does not obtain knowledge of the construction of a building upon his land until after such construction has been completed, he is not obliged in order to avoid liability for the cost of such construction to post the notice called for by sec. 11, Mechanics' Lien Act.

Johnson v. Butler, 7 A.L.R. 427.

(§ II-5)—RIGHT OF MINER AGAINST MINERAL CLAIM.

A miner may enforce a mechanic's lien against a mineral claim which has not been Crown granted. The 1910 amendment of sec. 10 of the Mechanics' Lien Act has overcome the effect of the decision of the full Court in Anderson v. Godsal, 7 B.C.R. 404.

Venness v. Stoddard, 9 W.W.R. 832.

(§ II-5)—UNREGISTERED FOREIGN COMPANY—SUPPLY OF COAL AS BASIS OF LIEN.

An unregistered foreign company is entitled to a mechanic's lien inasmuch as the enforcement of the lien does not involve the acquisition of holding of lands or any interest therein or the registration of any title there-to under the Land Titles Act within the meaning of sub-sec. 2 of sec. 11 of the Foreign Companies Ordinance. A person who supplies coal to a building contractor for generating steam for the purpose of hoisting material and to dry the building in course

of construction may be entitled to a mechanic's lien.

Wortman v. Frid Lewis Co., 9 W.W.R. 812.

(§ II-7)—WORK CONTRACTED BY LESSEE—REQUEST OF LESSOR.

Work contracted by a sub-lessee in pursuance of an agreement with his lessor authorizing him to build upon the land, constitutes a "request" on the part of the lessor within the meaning of sec. 2 (c) of the Mechanics Lien Act, R.S.O. 1914, ch. 140, which extends the operation of the statute to the estate of any person at whose request work is done or materials furnished.

Orr v. Robertson, 23 D.L.R. 17, 34 O.L.R. 147, 8 O.W.N. 471.

[Distinguished in Cut Rate Plate Glass Co. v. Solodinski, 25 D.L.R. 533, 34 O.L.R. 604.]

(§ II-7)—ERECTION OF FIRE SPRINKLER UNDER LEASE—RIGHT OF LESSOR.

One who erects a fire sprinkler system under an agreement whereby the equipment is merely leased to the owner of the premises with a right to purchase, reserving the title and ownership thereto until paid in the lessor, is not precluded from claiming the statutory mechanic's lien against the premises of which the erection has been made part. [Chicago & Alton R. Co. v. Union, etc., Co., 109 U.S. 702, followed.]

U.S. Construction Co. v. Rat Portage Lumber Co., 25 D.L.R. 162, 9 W.W.R. 657, 33 W.L.R. 101.

(§ II-8)—RIGHTS OF CONDITIONAL VENDOR—CONFLICTING LIENS.

Where the title to furnaces sold is retained by a vendor until the payment of the price, the rights of such parties are governed by sec. 9 of the Conditional Sales Act, R.S.O. 1914, ch. 136, and such vendor cannot rank as a lienholder under the provisions of the Mechanics' and Wage Earners' Lien Act, R.S.O. 1914, ch. 140.

Hill v. Storey, 25 D.L.R. 247, 34 O.L.R. 489, 9 O.W.N. 78.

(§ II-8)—INTEREST OF "OWNER"—VENDOR AND PURCHASER—REQUEST.

The lien given by sec. 6 of the Mechanics Lien Act, R.S.O. 1914, ch. 140, attaches to the estate or interest of the "owner," as defined by sec. 2 (c) of the Act, and does not include a purchaser of land whereon improvements were made prior to his taking possession without his request express or implied. [Orr v. Robertson, 23 D.L.R. 17, 34 O.L.R. 147, distinguished.]

Cut-rate Plate Glass Co. v. Solodinski, 25 D.L.R. 533, 34 O.L.R. 604, 9 O.W.N. 163.

(§ II-8)—TRUE OR REGISTERED "OWNER"—VENDOR AND PURCHASER.

The word "owner" in the Mechanics' Lien Act does not necessarily mean registered owner, and that any person having an interest in the land, whether registered or not, at whose request, etc., work has been done, is an owner as defined by the Act and

must be made a party. The case of *Jones v. Barnett*, [1900] 1 Ch. 370, 69 L.J. Ch. 242, was considered and followed, inasmuch as deciding that a purchaser cannot obtain a good title when the Court inadvertently deals with the property of one person under the supposition that it belongs to another, and without notice to the true owner.

National Mortgage Co. v. Rolston, 8 W.W.R. 630.

III. Priorities.

(§ III-11)—DELAY IN FILING—INTERVENING LIENS.

Section 23 of the Mechanics' Lien Act (Sask.), as amended by sec. 4, ch. 38, of the statutes, 1913, providing that the failure to file a lien or to commence action thereon within the statutory period shall not defeat the lien except as against liens registered by intervening parties meanwhile, does not create a priority in favour of intervening liens for work not performed and materials not furnished.

St. Pierre v. Rekert, 23 D.L.R. 592, 8 S.L.R. 416, 31 W.L.R. 909.

(§ III-11)—SUB-CONTRACTORS AND MATERIALMEN.

A notice given by a sub-contractor under sec. 32 of the Mechanics' Lien Act cannot avail to give the sub-contractor a priority over those who by virtue of sec. 30 have priority over him, but who have given no notice under sec. 32. A person who has contracted to do a certain specified part of a building contractor's work and to supply all the needed material therefor for one set sum can only rank in priority as a sub-contractor and not as a materialman under sec. 30 of the Mechanics' Lien Act. [*Coughlin v. Carver*, 20 D.L.R. 533, 7 W.W.R. 457, referred to.]

Wortman v. Frid Lewis Co., 9 W.W.R. 812.

(§ III-13)—PRIORITY OVER MORTGAGEE—WHEN.

In the absence of evidence that the selling value of the land incumbered by a mortgage has increased by the work or materials, no lien attaches under sec. 8 of the Mechanics Lien Act, R.S.O. 1914, ch. 140, upon such increased value, in priority to the interest of a mortgagee; nor will it warrant a sale of the mortgage to satisfy the statutory lien, even though subject to a first charge in favour of the mortgagee for advances made prior to the registration of the lien.

Cut-Rate Plate Glass Co. v. Solodinski, 25 D.L.R. 533, 34 O.L.R. 604, 9 O.W.N. 163.

(§ III-13)—MORTGAGE.

Held, upon the facts, that certain lien claims were only entitled to priority for their lien to the extent of the priority given by sec. 9 of the Mechanics' Lien Act relating to mortgaged premises.

McSparran v. Miller, 9 W.W.R. 81, 32 W.L.R. 392.

(§ III-13)—IMPROVEMENTS TO BUILDINGS—WORK AND MATERIALS—VALID LIEN AGAINST ESTATE OF OWNER OF EQUITY OF REDEMPTION—CLAIM TO PRIORITY OVER MORTGAGES UPON INCREASED SELLING VALUE—CLAIM NOT MADE UNTIL AFTER EXPIRY OF TIME FOR REGISTERING CLAIM OF LIEN—MECHANICS AND WAGE EARNERS' LIEN ACT, R.S.O. 1914, CH. 140, SECS. 8 (3), 17, 19 (1), 22, 23, 24.
Whaley v. Linnenback, 9 O.W.N. 211.

(§ III-14)—DIFFERENT LIENHOLDERS.

The priority acquired by notice under sec. 32 of the Mechanics' Lien Act, Alta., is a priority only over other lienholders of the same class as fixed by sec. 30, and does not interfere with the priority fixed by that section as between the different classes of lienholders.

Rendall, Mackay, Michie v. Warren & Dyett, 21 D.L.R. 801, 8 W.W.R. 113.

IV. For what work or materials.

(§ IV-15)—LIEN FOR WAGES—CONTINUOUS PERIOD.

The wages claims of labourers which are given a special privilege under the Mechanics' Lien Act, Alta., if for "not more than six weeks' wages," are the wages earned within a continuous period of six weeks counting backward from the last day's work, and do not include that part of the wages prior to such period which may be included in the wages for services at different times, spread over a larger time, but aggregating six weeks' wages or less.

Rendall, Mackay, Michie v. Warren & Dyett, 21 D.L.R. 801, 8 W.W.R. 113.

(§ IV-15)—STATUTORY LIEN FUND—HOW AFFECTED BY CONTRACT.

The fact that a contract provides that twenty per cent. of the amount of the progress certificates should be retained by the owner and should be paid within thirty days from the completion of the work does not in any way affect the statutory obligation on the owner to deduct twenty per cent. from any payments to be made by him in respect of the contract, namely, twenty per cent. out of the eighty per cent. of the progress certificates, in virtue of sec. 11 (1) of the Mechanics' Lien Act, R.S. Sask., ch. 150.

Pearl Bros. Hardware Co. v. Battell, 23 D.L.R. 193, 8 S.L.R. 305, 8 W.W.R. 1159, 31 W.L.R. 956.

(§ IV-15)—AMOUNT OF LIEN—PAYMENT BY INSTALMENTS—RIGHT OF DEDUCTION.

Under secs. 6 and 10 of the Mechanics and Wage Earners' Lien Act, R.S.O. 1914, ch. 140, the rights of lien-holders are measured by the amount "justly owing" by the owner to the contractor, and where an agreement provides payment by instalments, with the right to retain an amount as a drawback on the completion of the work, the lien accrues for the full amount of any instalment payable, subject to the owner's right of deduc-

tion in the event of the non-completion of the whole contract.

Deldo v. Gough-Sellers Investments, 25 D.L.R. 602, 34 O.L.R. 274, 8 O.W.N. 585.

(§ IV—15)—CLAIMS OF WAGE EARNERS AND MATERIALMEN—BUILDING CONTRACT—AMOUNT DUE BY OWNER TO CONTRACTOR—CLAIM FOR EXTRAS—AMOUNT REQUIRED TO COMPLETE BUILDING AFTER DISMISSAL OF CONTRACTOR—REPORT OF REFEREE—VARIATION ON APPEAL—COSTS.

Powell Lumber v. Gilday, 9 O.W.N. 180.

(§ IV—15)—AMOUNT DUE BY OWNER TO CONTRACTOR—LIENS OF MATERIALMEN AND WAGE EARNERS—DISMISSAL OF CONTRACTOR—AMOUNT NECESSARY TO COMPLETE WORK—FINDINGS OF REFEREE—APPEAL.

Powell Lumber Co. v. Hartley, 9 O.W.N. 132.

V. To what property attaches.

(§ V—30)—INSTALLATION OF WATER SYSTEM—PROPERTY AFFECTED BY LIEN—LAND ON WHICH HOUSE SITUATE.

A mechanic's lien under the Mechanics' Lien Act, Alta., sec. 4, is maintainable for installing a water system in a dwelling house as against the land occupied or enjoyed therewith and which was specified in the mechanic's lien which was registered, although the parcel of land upon which the house itself was situate was not included in the registered claim of lien; its omission therefrom operated only as a relinquishment of part of the security, and did not have the effect of extinguishing the remainder of it.

Jackson Water Supply Co. v. Bardeck, 21 D.L.R. 761, 8 A.L.R. 305, 8 W.W.R. 468, 31 W.L.R. 151.

(§ V—30)—INTEREST OF REGISTERED OWNER—PURCHASE OF LAND FOR ERECTION OF CHURCH.

The interest of the registered owner of land upon which a church has been erected by a contractor pursuant to a contract with the trustees for an unincorporated church congregation, who held under an agreement for sale from the owner, is chargeable with a lien in the contractor's favour, where the owner has not given the notice required by sec. 11 of the Alberta Mechanics' Lien Act. The fact that the contractor was a member of the congregation and knew of the interest of the various parties in the land does not cut down his right of lien. Where the contractor is entitled to a quantum meruit a fair and reasonable sum to compensate him for the work undertaken and done and for the responsibility involved in the doing of it should be added to the actual cost of it to him.

Rohl v. Pfaffenroth, 31 W.L.R. 197.

(§ V—32)—CLEARING OF TOWNSITE—EXTENT OF LIEN.

The lien for work done in clearing a townsite consisting of several tracts extends to the whole land benefited by the work within the meaning of sec. 6 (c) of the Mechanics'

Lien Act (B.C.), except whatever may be excluded from it by sec. 3, as being "a public street or highway."

Beseloff v. White Rock Resort Dev. Co., 23 D.L.R. 676, 8 W.W.R. 1338, 32 W.L.R. 73.

(§ V—34)—SCHOOL PROPERTY.

School trustees are within the meaning of the word "owner" in sec. 8 of the Mechanics' Lien Act (B.C.), and the lien is enforceable against school property, notwithstanding the provisions in sec. 3 of the Act making it inapplicable to any public work carried on by a municipal corporation or the express exemption of school property from sale under execution contained in the School Act. [*Scott v. Trustees*, 19 U.C.Q.B. 28; *Connely v. Havelock School Trustees*, 9 D.L.R. 875; *McArthur v. Dewar*, 3 Man. L.R. 72; *Moore v. Bradley*, 5 Man. L.R. 49, 53, considered.]

Hazel v. Lund, 25 D.L.R. 204, 9 W.W.R. 749, 32 W.L.R. 818.

(§ V—34)—MUNICIPAL PROPERTY—INDUSTRIAL SITES—FAILURE TO GIVE NOTICE DISCLAIMING LIABILITY.

Lands agreed to be conveyed by a city to a purchaser buying same as an industrial site upon his building and equipping a factory and performing certain conditions as to the operation of the factory are not exempt from having a mechanics' lien enforced against the city's title for the cost of the building under the Mechanics' Lien Act, Alta., if the city has failed to post up the notice repudiating responsibility under sec. 11 of the Act. [*Limoges v. Scratch*, 44 Can. S.C.R. 86, applied.]

Revelstoke Saw Mill Co. v. Alberta Bottle Co., 21 D.L.R. 779, 7 W.W.R. 1002, 30 W.L.R. 312.

[Affirmed in 9 A.L.R. 155.]

VI. Of sub-contractors and materialmen.

(§ VI—46)—EXTENT OF SUB-CONTRACTOR'S LIEN.

Under the Mechanics' Lien Act, R.S.B.C. 1911, ch. 154, the lien of a sub-contractor will attach when he has completed his contract, or if the contract provides for progress payments on account, a lien would attach for the amount of each instalment as it became due; and in the absence of evidence that either the whole or some part of the contract price was due or payable to the sub-contractor at the time of payment by the owner to the principal contractor of the only sum which accrued due to the latter before his abandonment of the contract, the sub-contractor cannot rely upon such payment to establish his lien. [*Turner v. Fuller*, 12 D.L.R. 255, 18 B.C.R. 69, and *Rosio v. Beech*, 9 D.L.R. 416, 18 B.C.R. 73, applied.]

Nepage v. Pinner, 21 D.L.R. 315, 21 B.C.R. 81, 8 W.W.R. 322, 30 W.L.R. 729.

(§ VI—46)—EXTENT OF SUB-CONTRACTORS' LIENS—EXCAVATION AND CLEANING UP.

Where the contract work both with the principal contractor and the sub-contractor for excavating expressly included the clean-

ing up of the debris on the completion of the building, and the owner called upon the principal contractor to do it before taking over the building and the latter replied that he would have the sub-contractor do it, the sub-contractor's lien for the excavation work will be kept alive by the cleaning up done by the latter in good faith in fulfilment of his sub-contract although his last prior work (the excavating) was done more than five months before. [Clarke v. Moore, 1 A.L.R. 49, referred to.]

Foster v. Brocklebank, 22 D.L.R. 38, 8 W.W.R. 464.

(§ VI—46)—LABOURER'S RIGHT TO LIEN.

A sub-contractor is not a "labourer" under the Mechanics' Lien Act, Alta., so as to acquire as to labour done as part of the contract, the special privileges given by that Act to labourers.

Rendall, Mackay, Michie v. Warren & Dyett, 21 D.L.R. 801, 8 W.W.R. 113.

(§ VI—47) — MATERIALMAN — EXTENT OF LIEN.

The lien created by sec. 5 of the Mechanics' Lien Act, Alta., for the unpaid price of material "until it is put or worked into the building" is a continuation of the seller's lien for the unpaid purchase price notwithstanding delivery until the material is worked into the building; and the remedy of resuming possession must be taken before the materials are worked into the building.

Metals Ltd. v. Trusts & Guarantee Co., 22 D.L.R. 495.

(§ VI—51)—EFFECT OF PAYING CONTRACTOR OR SUB-CONTRACTOR.

If it appears that moneys were paid by the owner to the contractor or sub-contractor for the very purpose of being applied in paying wage earners having a privileged and preferential lien under the Mechanics' Lien Act, Alta., over other lien-holders, and the moneys were in fact so applied, the owner is entitled to credit for such payments against the contract price.

Metals Ltd. v. Trusts & Guarantee Co., 22 D.L.R. 495.

VII. How waived or defeated.

(§ VII—55)—ASSIGNMENT OF CONTRACT—COMPLETION BY OWNER.

A stipulation in a building contract, that upon default of the contractor the school trustees shall be entitled to take his place to complete the contract and deduct the cost of completion from the balance of the purchase price, is in effect an assignment of the unpaid balance of the contract price within the purview of sec. 16 of the Mechanics' Lien Act (B.C.), and therefore invalid against the lien for the full balance of the contract of price acquired under the Act.

Hazel v. Lund, 25 D.L.R. 204, 9 W.W.R. 749, 32 W.L.R. 818.

(§ VII—55)—ESTOPPEL IN PAIS.

Under sec. 6 of the Mechanics' Lien Act, R.S.O. 1914, ch. 140, an estoppel in pais

from claiming such lien cannot arise, and such right can only be waived by a signed agreement.

Anderson v. Fort William Commercial Chambers, 25 D.L.R. 319, 34 O.L.R. 567, 9 O.W.N. 131.

(§ VII—55)—ESTOPPEL—PRIORITIES—COSTS.

Held, on the facts in a mechanics' lien action, that the loan company was bound to advance the balance of a loan made on a property, the mortgage not being put in in evidence, and there being nothing in the application for loan providing that the mortgagee was not bound to advance the money. Held also, that there was no waiver of a lien upon a certain lot where a form of waiver as to that lot had been signed without consideration and by mistake, there being no intention to waive and the claimant not knowing at the time of signing that he was to do work on that particular lot. Held also, that the principle of estoppel did not apply in the particular case. A loan company forcing lien-holders to go to trial to establish their rights and priorities was ordered to pay the costs of the trial.

Palfrey v. Brown, 31 W.L.R. 535.

(§ VII—55)—RELEASE—ACCORD AND SATISFACTION.

An owner's acceptance of the contractor's order given in return for the release of a materialman's lien operates as an accord and satisfaction of the materialman's claim, which cannot be re-awakened by the subsequent delivery of additional material and the filing of a fresh lien within the statutory period therefor.

Wortman v. Frid Lewis Co., 9 W.W.R. 812.

(§ VII—55)—FAILURE TO SERVE STATEMENT OF CLAIM.

Failure to serve a statement of claim in a mechanics' lien action within six months after issue does not destroy the lien.

Crown Lumber Co. v. Malcolm, 9 W.W.R. 481.

VIII. Enforcement; procedure.

(§ VIII—60)—NOTICE—POSTING BY OWNER—WHEN NECESSARY.

The Mechanics' Lien Act, 1906, Alta., ch. 21, sec. 11, does not make necessary the posting of a notice by the owner who does not learn until after the completion of the building by his tenant that construction work had begun, in order to escape the liability ensuing under the Act as upon the statutory presumption that in default of posting notice it shall be held to have been constructed "at the request of such owner;" sec. 11 applies only where knowledge of the construction is acquired by the owner during the course of construction, and it is not sufficient to fix the owner with liability that he had given the tenant permission by the lease to erect a building at his own expense and to remove it at the end of the term.

Johnson v. Butler, 22 D.L.R. 347.

(§ VIII—61) — PARTIES — ERRONEOUS DESCRIPTION OF—AFFIDAVIT.

The error in the affidavit of a mechanics' lien under the Mechanics' Lien Act, Alta., of misnaming the company for whom the work was done as equitable owner of the land as the Alberta Plate Glass Co., Ltd., instead of the Alberta Glass Bottle Co., Ltd., is cured by sec. 14 of the Act where no prejudice has been shewn.

Revelstoke Saw Mill Co. v. Alberta Bottle Co., 21 D.L.R. 779, 7 W.W.R. 1002, 30 W.L.R. 312.

[Affirmed in 9 A.L.R. 155.]

(§ VIII—62)—AFFIDAVIT—OMISSION OF NAME AND RESIDENCE.

The saving clause (sec. 14) of the Mechanics' Lien Act, Alta., may operate to make a lien effective although the affidavit of lien did not shew, as required by sec. 13, the name and residence of the owner of the property or interest to be charged, ex. gr. on a lien which the affidavit shewed to be for work on a school identified by name and location although the board of school trustees was not named as owner.

Foster v. Brocklebank, 22 D.L.R. 38, 8 W.W.R. 464.

(§ VIII—62)—AFFIDAVIT AS TO PAYMENT OF WAGES.

The affidavit or statutory declaration of the contractor or his agent that all wages up to and inclusive of the fourteenth day preceding the declaration of persons employed on the work who are entitled to wages have been paid in full required by sec. 30 (1) the Mechanics' Lien Act, C.S. 1903, ch. 147, is not a condition precedent to a lien by a contractor on a completed contract, and an order of the Judge of the Gloucester County Court dismissing a claim of lien because such an affidavit or declaration had not been given to the respondent company was set aside.

Brown v. Bathurst Lumber Co., 43 N.B.R. 527.

(§ VIII—62 a)—COSTS OF ACTION TO ENFORCE — QUANTUM — MECHANICS AND WAGE EARNERS LIEN ACT, R.S.O. 1914, CH. 140, SEC. 42—"JUDGMENT"—TAXATION OF COSTS.

Powell Lumber Co. v. Hartley, 9 O.W.N. 249.

(§ VIII—63) — SUFFICIENCY OF NOTICE — CERTIFICATE OF LIS PENDENS.

It is not essential that the certificate of lis pendens in a mechanics' lien action shall in terms state that the action was instituted "to realize the lien;" it is a sufficient compliance with sec. 35 of the Mechanics' Lien Act, Alta., that such purpose was indicated by the mention of the title or interest being called in question under that statute.

Revelstoke Saw Mill Co. v. Alberta Bottle Co., 21 D.L.R. 779, 7 W.W.R. 1002, 30 W.L.R. 312.

[Affirmed in 9 A.L.R. 155.]

(§ VIII—63)—COMPLETION BY OWNER—NOTICE AND REGISTRATION.

When an owner resiliates his contract with his contractor, and continues the work of construction himself, employing the same workmen, he is considered as being substituted for the contractor and as working on his own account. In these circumstances one of the workmen can exercise the lien of workmen and furnishers of materials without giving the notice mentioned in articles 2013 (c) and 2013 (g), the registration and the notice required by art. 2013 being sufficient.

Temple Baptist Church v. Perras, 48 Que. S.C. 84.

(§ VIII—66)—TIME OF FILING—ABANDONMENT OF WORK—WHAT CONSTITUTES.

A cessation of work by a sub-contractor under a mistaken belief that the contract was completed, but which is later resumed by him and finished, constitutes no "abandonment" of the work within the meaning of sec. 22 (1) of the Mechanics Lien Act, R.S.O. 1914, ch. 140, requiring the claim for a lien to be registered within 30 days after the completion or abandonment of the contract.

Anderson v. Fort William Commercial Chambers, 25 D.L.R. 319, 34 O.L.R. 567, 9 O.W.N. 131.

(§ VIII—66)—TIME OF FILING—LAST DELIVERY OF MATERIALS.

A mechanics' lien is enforceable under sec. 22 of the Mechanics and Wage Earners Lien Act, R.S.O. 1914, ch. 140, if registered within the statutory period from the last delivery of materials, even though the materials last delivered may never have been used in the construction of the building, if they were furnished for the purpose of being used therein. [Brooks-Sanford Co. v. Theodore, etc., Co., 22 O.L.R. 176, distinguished; Bunting v. Bell, 23 Gr. 584, overruled; Larkin v. Larkin, 32 O.R. 80, approved.]

Kalbfleisch v. Hurley, 25 D.L.R. 469, 34 O.L.R. 268, 8 O.W.N. 584.

(§ VIII—66)—TIME OF FILING—LAST DELIVERY OF MATERIAL.

A lien registered within the statutory period of the last delivery of material is a sufficient compliance with the Act as to the time of registration.

Deldo v. Gough-Sellers Investments, 25 D.L.R. 602, 34 O.L.R. 274, 8 O.W.N. 585.

(§ VIII—66)—TIME OF ENFORCEMENT—SUNDAY.

Where the nineteenth day after the filing of the affidavit of a mechanics' lien falls on a Sunday, an action to enforce the lien is in time if brought on the following day under the Interpretation Act, Alta., sec. 7, sub-sec. 21.

Revelstoke Saw Mill Co. v. Alberta Bottle Co., 21 D.L.R. 779, 7 W.W.R. 1002, 30 W.L.R. 312.

[Affirmed in 9 A.L.R. 155.]

(§ VIII—66)—CLAIM OF CONTRACTOR—ABANDONMENT OF WORK—TIME FOR REGISTRATION OF LIEN AND COMMENCEMENT OF ACTION—MECHANICS AND WAGE EARNERS LIEN ACT, R.S.O. 1914, CH. 140, SECS. 22, 23—AMOUNT DUE TO CONTRACTOR AFTER ALLOWANCE FOR DEFECTS AND NON-COMPLETION.

Corby v. Perkus, 9 O.W.N. 318.

(§ VIII—67)—PLACE OF FILING.

Where the official with whom the affidavit of a mechanics' lien is to be filed under the Mechanics' Lien Act, Alta., is not only a deputy clerk of the Supreme Court (in which capacity he was entitled to receive the filing), but also a deputy clerk of the District Court (in which capacity alone the filing would not be authorized), the stamping of the filing as in the District Court will not invalidate the lien where it was duly forwarded to the Land Titles office in like manner as it would have been had it been stamped as a Supreme Court filing if no prejudice resulted, the curative clause, sec. 14 of the Act, being operative in respect of the error. [27 Cyc. 132, referred to.]

Revelstoke Saw Mill Co. v. Alberta Bottle Co., 21 D.L.R. 779, 7 W.W.R. 1002, 30 W.L.R. 312.

[Affirmed in 9 A.L.R. 155.]

(§ VIII—69)—PERSONAL JUDGMENT.

If under the Mechanics and Wage Earners Lien Act, R.S.O. 1914, ch. 140, a contractor fails to enforce his lien against the owner because of his failure to commence the action within the statutory period, the contractor may be awarded in the same hearing a personal judgment against the owner to the extent of the amount of the lien claimed.

Kendler v. Bernstock, 22 D.L.R. 475, 33 O.L.R. 351, 8 O.W.N. 122.

MEDICAL EXAMINERS.

Statements made to, by insured, see Insurance.

Misrepresentations as to appointment as affecting stock subscription, see Corporations and Companies.

MEDICAL PRACTICE.

See Physicians and Surgeons; Dentists.

MERCHANT SHIPPING.

See Shipping; Admiralty; Carriers.

MESNE PROFITS.

Right to recover, see Trespass; Damages.

MILITIA.

Exemption of soldiers from process, see Arrest; Writ and Process.

MINES AND MINERALS.

I. ON PUBLIC LANDS.

- A. Claims; location; re-location.
- B. Work; abandonment; forfeiture.
- C. Conflicting claims; contests.

II. ON PRIVATE LANDS.

- A. In general; coal mines; quarries.
- B. Oil and gas.

III. MINERS' LIENS.

- A. When lien exists.
- B. Priorities.
- C. For what work or materials.
- D. To what property attaches.
- E. How waived or defeated.
- F. Enforcement; procedure.

Injury to employee in, duty as to safety, see Master and Servant.

As affected by Land Titles Act, see Land Titles.

I. On public lands.

(§ I—1)—SCOPE OF LEASE—POLLUTION OF STREAM BY LESSEE.

Leases granted under the Mining Act, C.S.N.B. 1903, ch. 30, do not empower the lessee to discharge polluted water into a stream; the Lieutenant-Governor-in-Council has no power to make a lease or grant that affects the rights of private individuals.

Nepisiquit, &c., Co. v. Can. Iron Corp., 42 N.B.R. 387.

A. CLAIMS; LOCATION; RE-LOCATION.

(§ I A—8)—PLACER CLAIM—LOCATION—RECTIFICATION OF LEASE.

A free miner locating a placer claim in the vicinity of lands under lease from the gold commissioner, and who locates his claim outside of the boundaries described in such lease, is not deprived of his claim legally obtained by his location and record when a rectification is afterwards made of the boundaries described in the lease under the authority of an order-in-council, particularly where such order-in-council contained a clause saving the rights of free miners.

Deisler v. Spruce Creek, 22 D.L.R. 550, 31 W.L.R. 289.

B. WORK; ABANDONMENT; FORFEITURE.

(§ I B—10)—REPRESENTATION WORK—SCOPE OF AUTHORITY.

An authority given one to do representation work on a mining claim for gold in order to obtain a renewal of the grant does not authorize the donee of such power to give a lay to work the claim without the previous authority or subsequent ratification of the owner, and constitutes an act of trespass on the part of any one to work the claim in excess of such right. [Olsen v. Desjarlais, 15 W.L.R. 72, followed.]

Mills v. Porter, 24 D.L.R. 638, 32 W.L.R. 491.

(§ I B—10)—CANCELLATION OF COAL LEASE—DOMINION LANDS—NOTICE.

Held, that a lease of coal under Dominion lands had not been effectively cancelled by a notice from the Department of the Interior inasmuch as (1) the notice had never reached the lessee, and (2) the notice announced the prior determination of the lease and not an intention to determine the lease, as provided

for by the terms of the lease (per curiam, Idington and Brodeur, JJ., dissentientibus).
Rex v. Paulson, 9 W.W.R. 1099, reversing 20 D.L.R. 787, 15 Can. Ex. 292.

(§ I B—10)—LAND STAKED OUT AND RECORDED AS MINING CLAIM—RIGHT TO STAKE OUT AND RECORD AS QUARRY CLAIM—ABANDONMENT OR FORFEITURE—DISCOVERY OF MINERAL IN PLACE—MINING ACT OF ONTARIO, R.S.O. 1914, CH. 32, SECS. 34, 118.
 Re Franker and Bartleman, 8 O.W.N. 360.

C. CONFLICTING CLAIMS; CONTESTS.

(§ I C—16)—PLACER MINING—LEASE FOR—OCCUPATION UNDER.

The marking out of the ground by the applicant for a mining lease under the Placer Mining Act, R.S.B.C., ch. 136, is merely a preliminary to the application for a lease; it does not constitute occupation and is subject to the modifications which the gold commissioner may make and to the boundaries which he may fix. (Per Irving, J.A.)

Deisler v. Spruce Creek, 22 D.L.R. 550, 31 W.L.R. 289.

II. On private lands.

A. IN GENERAL; COAL MINES; QUARRIES.

(§ II A—25)—MINING OPTION—HOW DISTINGUISHED FROM AGREEMENT OF SALE.

An option (mining) or working bond can be distinguished from an agreement of sale, in that in the former the vendor looks to payment from whatever ore may be extracted from the mine and not to the vendor's covenant for payment.

Venness v. Stoddard, 9 W.W.R. 832.

(§ II A—25)—MINING PROPERTIES—CONTRACTS—EVIDENCE—FAILURE TO ESTABLISH AGREEMENT.

Browne v. Timmins, 8 O.W.N. 482.

(§ II A—28)—FORFEITURE OF COAL LEASE—INVALID NOTICE—INACCURATE DATE.

Forfeitures are regarded with disfavour by the Courts, and their upholding will be avoided even for trifling reasons; therefore an inaccuracy in the reference to the date of a lease is sufficient to invalidate the notice of forfeiture.

Big Valley Collieries v. MacKinnon, 23 D.L.R. 62, 9 W.W.R. 4, 32 W.L.R. 158.

III. Miners' liens.

(See previous Annual Digests.)

MINORS.

See Infants; Parent and Child.

MISDEMEANOURS.

See Criminal Law; Summary Convictions.

MISDIRECTION.

See Appeal; Criminal Law; Trial; New Trial.

MISJOINDER.

In pleading, see Pleading.
 Of parties, see Parties.
 Of actions, see Actions.

MISREPRESENTATION.

See Fraud and Deceit; Contracts; Vendor and Purchaser.

As affecting rights growing out of agency, see Principal and Agent; Brokers.

MISTAKE.

Relief against, see Contracts; Vendor and Purchaser.

(§ VII A—160)—CHEQUE ERRONEOUSLY DRAWN TO HUSBAND FOR DEBT DUE WIFE.

A husband having conveyed his business to his wife and after working for her for a certain time as an employee, the husband and wife have separated and are living apart, and the husband has ceased to have anything to do with the business, and the defendant knew of this change and intended to deal with the wife, but through error a cheque was made payable to the husband, who appropriated the money to his own use, the payment to the husband cannot be considered a valid payment of the debt, as the wife was in no way to blame for the error.

Ross v. New Brunswick Construction Co., 24 D.L.R. 234, 48 N.B.R. 291.

(§ VII B—165)—MONEY PAID UNDER MISTAKE OF LAW—COSTS PAID BY SOLICITORS.

The rule of law that moneys paid under a mistake of law cannot be recovered does not apply where the mistakes are made by officers of the Court; therefore costs paid by a solicitor under a mistake of rules of practice as to an examination for discovery may be recovered by him. [Ex parte James, L.R. 9 Ch. 609, followed.]

London Guarantee & Accident Co. v. Henderson, 23 D.L.R. 38, 25 Man. L.R. 617, 8 W.W.R. 1260, 32 W.L.R. 61.

MITIGATION.

Of damages, see Damages.

MONEY LENDERS.

Rate of interest, see Interest.
 Usurious interest, see Usury.

MONOPOLY AND COMBINATIONS.

Validity of contracts as to generally, see Contracts.

(§ II B—16)—RESTRAINT OF TRADE—PRICE RESTRICTION AGREEMENT.

A price restriction agreement between the wholesaler and the retail dealer whereby the latter was to sell certain goods bought from the wholesaler only at prices therein stated, will not be enforced because of its illegality under Criminal Code, sec. 498, if its stipulations are such as unreasonably to enhance the price of the goods to the pur-

chasing public. [Wampole v. Karn, 11 O.L.R. 619; Weidman v. Shragge, 20 Can. Cr. Cas. 117, 46 Can. S.C.R. 1, followed; Elliman v. Carrington, [1901] 2 Ch. 275; Miles Medical v. Park, 220 U.S. 373, referred to.]

Stearns v. Avery, 24 Can. Cr. Cas. 339, 33 O.L.R. 251, 8 O.W.N. 70.

MORATORIUM.

Relief to mortgagors upon foreclosure, see Mortgage, VI E.

Annotation.

Postponement of Payment Acts, construction and application: 22 D.L.R. 865.

(§ I-1)—VENDOR'S LIEN—ENFORCEMENT OF. The Moratorium Act, Man., does not prevent the enforcement of a vendor's lien for unpaid purchase money where nothing whatever had been paid and the lien was claimed for the whole purchase price.

Ronald v. Lillard, 23 D.L.R. 392, 25 Man. L.R. 393, 7 W.W.R. 1128, 30 W.L.R. 382.

(§ I-1)—AGREEMENT OF SALE—LANDS IN OTHER PROVINCE.

The Moratorium Act, Man., does not apply to the enforcement in Manitoba of an agreement for sale of lands situate in another province.

Stanley v. Struthers, 22 D.L.R. 60, 7 W.W.R. 1060.

(§ I-1)—CROP AGREEMENTS.

An agreement for sale of lands whereby the purchaser is to pay the proceeds of one-half of the wheat crop yearly until the purchase money and interest is fully paid, is within the exception of sec. 4 (b) of the Moratorium Act, Man., although the agreement is not for delivery of part of the crop itself; but sec. 3 of the Act applies to extend for one year the time fixed for redemption under the Master's report made before the Act came into force.

Haight v. Davies, 22 D.L.R. 507, 25 Man. L.R. 187, 7 W.W.R. 1154, 30 W.L.R. 565.

(§ I-1)—FORECLOSURE OF LAND AGREEMENTS AND MORTGAGES—PERIOD OF EXTENSION.

The period of one-year extension prescribed by secs. 3 and 7 of the amending Act (Man.), 5 Geo. V., ch. 10, known as the Moratorium Act, to enable purchasers and mortgagors of land to meet defaults, cannot be invoked after the period has once run without the default being made good; consequently payment by a purchaser of a tax arrear, the default of which had run a year, will not revive the operation of the statute as against a vendor seeking enforcement of the contract by reason of such default.

Campbell v. Roubert, 25 D.L.R. 652, 9 W.W.R. 855, affirming 9 W.W.R. 175, 32 W.L.R. 444.

(§ I-1)—SALE UNDER MORTGAGE—FAILURE TO GIVE NOTICE—INJUNCTION.

In an application by a mortgagor in re-

spect of sale proceedings, it was held that no relief or stay of extra judicial proceedings could be granted under the Moratorium Act, Stat. of B.C. 1915, ch. 35, where the moneys owing were in respect of interest or principal and interest:—Held, also, that the failure of the mortgagee to give the notice required by sec. 2, sub-sec. 1, para. c, gave no jurisdiction to relief on an application under said Act, but an injunction might be applied for to restrain the mortgagee from proceeding with the sale.

Re Canada Permanent Mortgage Corp., 9 W.W.R. 180.

(§ I-1)—PROHIBITING FORECLOSURES DURING WAR—PROTECTION OF VOLUNTEERS.

The Act for the protection of volunteers makes it unlawful during the continuance of the war to take foreclosure proceedings against the wife of a volunteer on active service, to enforce a mortgage or encumbrance upon her property, or to recover possession of property of which she is in possession.

Shipman v. Can. Imperial Trust Co., 9 W.W.R. 880.

(§ I-1)—EXTENSION AS VESTED RIGHT—MEANING OF FORECLOSURE—LAND PURCHASE AGREEMENTS—SEVERAL WRITINGS.

Re Real Property Act, 22 D.L.R. 921, 31 W.L.R. 966.

(§ I-1)—JUDGMENT—SUSPENSION OF.

A registered judgment is an instrument charging land within the meaning of the Moratorium Act, 1914, Man., but where registered after July 31, 1914, it is a "contract" within the exception of sec. 6, and by virtue of the County Courts Act, so that the restrictions of the Moratorium Act do not apply to prevent an order for sale being made thereunder within the six months' period.

Slobodian v. Harris, 21 D.L.R. 75, 25 Man. L.R. 74, 7 W.W.R. 1017, 30 W.L.R. 381.

(§ I-1)—WORD "INSTRUMENT"—REGISTERED JUDGMENT—SUSPENSION OF LIEN.

The word "instrument" as used in sec. 2 of the Moratorium Act, Man., does not include a registered judgment for the payment of money so as to suspend or take away the judgment creditor's right of action for a declaration of lien in respect of the certificate of judgment registered in the Land Titles office and enforcement of same by a judicial sale.

Chapman v. Purtell, 22 D.L.R. 860, 25 Man. L.R. 76, 7 W.W.R. 1155, 30 W.L.R. 422.

(§ I-1)—REGISTERED JUDGMENT—"INSTRUMENT CHARGING LAND WITH THE PAYMENT OF MONEY"—COUNTY COURTS ACT, R.S.M. 1913, ch. 44, SECS. 215, 216—STAYING PROCEEDINGS.

Ledoux v. Cameron, 21 D.L.R. 864, 25 Man. L.R. 71, 7 W.W.R. 687, 30 W.L.R. 774.

MORTGAGE.**I. NATURE, VALIDITY AND EFFECT.**

- A. In general; delivery.
- B. What constitutes.
- C. What property covered; description of property.
- D. Validity.
- E. Rights and liabilities of parties generally.
- F. Trustees and bondholders.

II. PRIORITY.

- A. As to other mortgages.
- B. As to judgments and other liens and equities.

III. VENDEE OF MORTGAGOR; ASSUMPTION OF DEBT.**IV. ASSIGNMENT.****V. SATISFACTION; DISCHARGE; RELEASE.****VI. ENFORCEMENT.**

- A. Generally; effect.
- B. On default of interest, instalment, taxes, etc.
- C. Who may foreclose; parties.
- D. Defences.
- E. Relief; decree; effect as to fund.
- F. Strict foreclosure; foreclosure by advertisement.
- G. Sale.
- H. Surplus; proceeds.
- I. Deficiency and judgment therefor.
- J. Subsequent suit.

VII. REDEMPTION.

- A. In general; right of.
- B. Who may redeem.
- C. Time; amount.
- D. Mode and effect.

Statute of Limitations, Adverse Possession, see Adverse Possession; Limitation of Actions.

Deed of trust for creditors, priorities, see Assignment for Creditors.

As to chattel mortgage, see Chattel Mortgage.

Of infant's land, see Infants, II.

Recording of, see Records and Registry Laws; Land Titles.

Sale of land under vendor's lien, see Vendor and Purchaser.

For service of notice of motion for foreclosure, see Motions and Orders; Writ and Process.

Priorities over mechanics' liens, see Mechanics' Liens.

Powers of corporations as to, see Corporations and Companies.

Annotations.

Equitable rights on sale subject to mortgage: 14 D.L.R. 652.

Foreclosure; re-opening foreclosures: 17 D.L.R. 89.

Land titles (Torrens system); foreclosing mortgage made under Torrens system; jurisdiction: 14 D.L.R. 301.

Mortgages and land purchase agreements affected by Moratorium: 22 D.L.R. 865.

Assumption of debt upon a transfer of the mortgage premises: 25 D.L.R. 435.

I. Nature, validity and effect.**B. WHAT CONSTITUTES.****(§ I B—8)—CONVEYANCE ABSOLUTE IN FORM—POWER OF SALE.**

A conveyance of land by a deed absolute in form, but which had been intended as security for a debt, does not import a power of sale by which the grantee may sell the property without the concurrence of the grantor. [Pearson v. Benson, 28 Beav. 598, followed; Oland v. McNeil, 32 Can. S.C.R. 23, distinguished.]

Hetherington v. Sinclair, 23 D.L.R. 630, 34 O.L.R. 61, 8 O.W.N. 383.

D. VALIDITY.**(§ I D—15)—MORTGAGE BY MARRIED WOMAN PROCURED BY FRAUD—PLEA OF "NON EST FACTUM."**

A married woman who by the fraud of the company's agent is innocently induced to sign mortgage papers in favour of the company and a direction to pay the proceeds of the loan to such agent in respect of property which she did not own but which was transferred into her name without her knowledge by such agent in pursuance of his fraudulent scheme to obtain money from the company in excess of its value through a false valuation and an application in the name of another, is not estopped from repudiating liability under the mortgage under a plea of non est factum and of claiming that she was led to believe that the documents she was signing were of an entirely different character, by her failure to personally inspect and read over what she was signing; under such circumstances she was under no duty to protect the company from possible frauds by its own agent. [Dominion Permanent v. Morgan, 4 D.L.R. 331, 17 B.C.R. 366, reversed.]

Morgan v. Dominion Permanent Loan Co., 22 D.L.R. 163, 50 Can. S.C.R. 485.

F. TRUSTEES AND BONDHOLDERS.**(§ I F—25)—MORTGAGE OF CHURCH—GUARANTY OF DEBT BY TRUSTEES—SCOPE.**

A covenant by the trustees of a church guaranteeing the payment of the mortgage debt creates a general guaranty as against all the guarantors, notwithstanding a clause that the covenants of the mortgage shall affect and bind only the specific property of the church.

Colonial Investment & Loan Co. v. Grady, 24 D.L.R. 176, 8 A.L.R. 496, 8 W.W.R. 995, 31 W.L.R. 575.

II. Priority.**A. AS TO OTHER MORTGAGES.****(§ II A—30)—EQUITABLE MORTGAGE—EXECUTIONS.**

An assignment of the proceeds of a mortgage to cover an indebtedness to a bank in

pursuance of a prior agreement by the debtor to place a mortgage on his lands whenever required by the bank, the mortgage being executed prior to but not registered after the filing of an execution, disentitles the bank, by virtue of the provisions of secs. 70 and 118 (2) of the Land Titles Act (Sask.), as amended by sec. 17 of ch. 16 of Acts 1912-13, to claim priority by way of equitable mortgage over the execution creditor.

Union Bank of Canada v. Lumsden Milling Co., 23 D.L.R. 460, 8 S.L.R. 263, 8 W.W.R. 1167, 31 W.L.R. 800.

B. AS TO JUDGMENTS AND OTHER LIENS AND EQUITIES.

(§ II B—42)—MORTGAGE BY WAY OF LEASE—PRIORITY TO EXECUTION CREDITOR.

An attornment clause in a mortgage creating the relationship of landlord and tenant entitles such landlord to priority over execution creditors to the extent of one year's rent due at the time of seizure by the sheriff.

Hyde v. Chapin, 8 W.W.R. 820.

III. Vendee of mortgage; assumption of debt.

(§ III—45)—ASSUMPTION OF DEBT—IMPLIED COVENANT.

Section 63 of the Land Titles Act, ch. 41 (Sask.), which implies a covenant to pay the mortgage debt by a purchaser of the mortgaged premises has no application to the purchase of only an interest in the mortgaged premises. [*Short v. Graham*, 7 W.L.R. 787, followed.]

Montreal Trust Co. v. Boggs, 25 D.L.R. 432, 9 W.W.R. 1200, 31 W.L.R. 914.

(§ III—45)—ASSUMPTION BY PURCHASER OF MORTGAGED LAND—OBLIGATION TO PAY—ASSIGNMENT TO MORTGAGEE—ACTION AGAINST MORTGAGOR AND PURCHASER TO RECOVER MORTGAGE MONEYS—JUDGMENT—RELIEF OVER—INDEMNITY—STAY OF PROCEEDINGS.

Smith v. Wright, 8 O.W.N. 609.

(§ III—46)—AGREEMENT FOR SALE OF LAND—ASSUMPTION OF EXISTING MORTGAGE—DISCHARGE OF EXISTING MORTGAGE AND CREATION OF NEW MORTGAGE FOR LARGER AMOUNT AT INCREASED RATE OF INTEREST—ALLOWANCE—ADJUSTMENT—COSTS.

Re Osterhout and Cada, 8 O.W.N. 30.

(§ III—47)—ASSUMPTION OF DEBT—GRANTEE'S LIABILITY TO GRANTOR.

The equitable obligation of the purchaser to indemnify the vendor when the amount of the mortgage is deducted from the purchase price, and is in that sense retained by the purchaser, arises only when the purchaser is actually one in fact, and not when he is the mere nominee or agent of another. [*Corby v. Gray*, 15 O.R. 1; *Walker v. Dickson*, 20 App. R. (Ont.) 96, followed; *Small v. Thompson*, 28 Can. S.C.R. 219, distinguished.]

Campbell v. Douglas, 25 D.L.R. 436, 34 O.L.R. 580, 9 O.W.N. 148.

(§ III—48)—ASSUMPTION OF DEBT—GRANTEE'S LIABILITY TO MORTGAGEE.

Where a mortgagor sells the mortgaged premises and the purchaser assumes the mortgage, or retains in his possession an amount of purchase money equivalent thereto, the purchaser is compelled by sec. 63 of the Land Titles Act, ch. 41 (Sask.), to appropriate that money to the mortgage, just as formerly he was compelled in equity to hand it over to the mortgagor if the mortgagor was compelled to pay the mortgage.

Montreal Trust Co. v. Boggs, 25 D.L.R. 432, 9 W.W.R. 1200, 31 W.L.R. 914.

(§ III—48)—IMPLIED COVENANT TO PAY MORTGAGE DEBT—PERSONAL JUDGMENT.

A personal judgment may be properly recovered against the transferee of mortgaged premises, when the statement of claim sufficiently sets forth all facts necessary to entitle the plaintiff to such judgment, and the prayer for relief distinctly states that the relief against the defendant is sought under the implied covenant contained in the Land Titles Act (Sask.).

Assiniboia Land Co. v. Acres, 25 D.L.R. 439, 8 S.L.R. 426, 9 W.W.R. 368, 32 W.L.R. 580.

(§ III—48)—TRUSTEE TRANSFeree—IMPLIED COVENANT TO PAY DEBT.

A trustee transferee of land subject to a mortgage cannot be held to covenant impliedly with the mortgagee that he will pay the principal money and interest secured by the mortgage, notwithstanding sec. 52 of the Land Titles Act. [*Short v. Graham*, 7 W.L.R. 787, referred to.]

Evans, Johnstone v. Ashcroft, 8 W.W.R. 899.

(§ III—48)—IMPLIED COVENANT TO PAY—PLEADING.

Where an action is brought against a transferee of registered land subject to a mortgage, and personal judgment is sought against him under sec. 52 of the Land Titles Act, there should be an express claim setting forth that such transferee is so liable, as the defendant sought to be charged ought to be distinctly informed as to how and by what authority he is alleged to be held personally liable. [*Colonial Investment Co. v. Foisie*, 1 W.W.R. 397, followed.]

Home Investment & Savings Assoc. v. Middleditch, 7 W.W.R. 1202.

IV. Assignment.

(§ IV—50)—HYPOTHEC—SUBSTITUTION.

The registration of the transfer of a debt has not the effect of creating the hypothec different from that created by the deeds of obligation, but simply substitutes new creditors for the former ones; therefore, if injured in any way, the debtor is not entitled to attack the deed of transfer but should attack the deeds of original obligation.

Martineau v. Pennington, 23 D.L.R. 746, 24 Que. K.B. 3.

(§ IV—50)—ACTION ON BY ASSIGNEE—SUMMARY JUDGMENT—DEFENCE—ASSIGNMENT BY MORTGAGEE—TRUSTEE IN BREACH OF TRUST—NOTICE TO ASSIGNEE—EVIDENCE.

Patterson v. Wurm, 9 O.W.N. 195.

V. Satisfaction; discharge; release.

(§ V—64)—MORTGAGEE PRISONER OF WAR—UNABLE TO SIGN DISCHARGE—PAYMENT INTO COURT.

The Trustee Act, R.S.O. 1914, ch. 121, does not enable the Court to make an order vesting land in Ontario in the mortgagor when he is willing to pay off the mortgage and to pay the money into Court, where the mortgagee's signature to a discharge cannot be obtained because of his internment abroad as a prisoner of war; but if the mortgagor has made a contract of sale of the lands free from incumbrance he may apply under the Conveyancing and Law of Property Act, R.S.O. 1914, ch. 109, sec. 21, for an order to pay into Court sufficient money to meet the incumbrance and interest, including an allowance for the costs of a future motion for payment out, and may thereupon obtain the Court's order declaring the land to be free from the incumbrance. [Re Keeler, 32 L.J. Ch. 101, disapproved; Re Underwood, 3 K. & J. 745, distinguished; see the subsequent Ont. statute of 1915, ch. 21, amending the Mortgages Act, R.S.O. 1914, ch. 112.]

Re Worthington, 21 D.L.R. 402, 33 O.L.R. 191, 7 O.W.N. 837.

VI. Enforcement.

A. GENERALLY; EFFECT.

(§ VI A—70)—FORECLOSURE—SPECIAL PROVISO AFFECTING REMEDY—ACCELERATION CLAUSE.

A purchase-money mortgage containing a proviso that the mortgagor may retain a certain sum out of the last instalment until he receives a conveyance of the interest of an infant who was a party to the conveyance with the vendor-mortgagee, does not disentitle the mortgagee to his remedy of foreclosure upon default, but the acceleration clause will not override the proviso as to the deferred sum, and recovery will be limited exclusive of that amount. [Willson v. Thomson, 19 D.L.R. 593, 31 O.L.R. 471, varied.]

Thomson v. Willson, 23 D.L.R. 468, 51 Can. S.C.R. 307.

(§ VI A—70)—PROCEDURE—SPECIAL STATUTE—ACTIONS BEFORE MASTER.

The special procedure provided by sec. 3, ch. 6, of the statutes 1914 (Alta.), that all actions for the enforcement of mortgages or agreements for the sale of land shall be brought before a Master in Chambers in the Supreme Court, does not debar plaintiffs from proceeding under the ordinary procedure.

Colonial Investment & Loan Co. v. Grady, 24 D.L.R. 176, 8 A.L.R. 496, 8 W.W.R. 995, 31 W.L.R. 575.

(§ VI A—70)—DISTRESS—RIGHTS OF ASSIGNS.

Section 5 of the Distress Act, R.S.S. ch. 51, which entitles a mortgagee to distrain upon "the goods and chattels of the mortgagor or his assigns," is confined to an assignee of the land whose assignment is subsequent to the mortgage, but does not give a mortgagee the right to distrain on the goods of someone whose interest was prior to the mortgage. [Vousden v. Hopper, 4 S.L.R. 1, applied.]

Bowers v. Bowlen, 25 D.L.R. 87, 8 S.L.R. 436, 9 W.W.R. 604, 32 W.L.R. 955.

(§ VI A—70)—ATTORNMENT CLAUSE—POWER OF DISTRAINT.

A tenancy created by an attornment clause to secure mortgage interest is one created by estoppel, and binds those privy to the estoppel, but not third parties. [Tadman v. Henman, 2 Q.B.D. 168; Jellicoe v. Wellington Loan Co., 4 N.Z.L.R. 330, referred to.] The fact that the mortgagee has neither the legal estate in the lands, nor any reversion, does not disentitle him from distraining. [Morton v. Woods, L.R. 4 Q.B. 293, and Ex parte Punnett, 16 Ch.D. 226, applied.]

Great West Saddlery v. Griesbach, 9 W.W.R. 528.

(§ VI A—70)—ACTION FOR FORECLOSURE—MOTION FOR SUMMARY JUDGMENT—ACCOUNT.

Halstead v. Sonshine, 7 O.W.N. 729.

(§ VI A—70)—FORECLOSURE—TITLE OF MORTGAGOR—REMEDY UPON MORTGAGOR'S COVENANT FOR PAYMENT—STATUTE OF LIMITATIONS—COUNTERCLAIM—BREACH OF AGREEMENT—STATUTE OF FRAUDS.

Curry v. Girardot, 7 O.W.N. 642.

(§ VI A—70)—PROCEEDINGS TO ENFORCE—APPLICATION FOR LEAVE UNDER MORTGAGORS AND PURCHASERS RELIEF ACT, 1915—ARRANGEMENT BETWEEN MORTGAGOR AND MORTGAGEE FOR RECEIPT AND APPLICATION OF RENTS OF MORTGAGED PROPERTIES.

Re Thomas and Morris, 8 O.W.N. 403.

B. ON DEFAULT OF INTEREST, INSTALMENT, TAXES, ETC.

(§ VI B—75)—RIGHT TO DISTRESS—GOODS OF OTHER PERSONS.

Where a land mortgage contains an attornment clause in respect of the interest, and in addition purports to give the mortgagee the right to distrain upon any goods upon the mortgaged premises for arrears of principal and to recover same by way of rent reserved, a mere personal license is created by the latter power as between the mortgagor and the mortgagee, which does not justify the mortgagee distraining goods of persons

other than the mortgagor which may be upon the premises. [Edmonds v. Hamilton Provident, 18 A.R. (Ont.) 347; Miller v. Imperial Land Co., 11 Man. L.R. 247; Trust & Loan Co. v. Lawrason, 10 Can. S.C.R. 679, applied.]

McDermott v. Fraser, 23 D.L.R. 430, 25 Man. L.R. 298, 8 W.W.R. 196.

(§ VI B-75)—ACTION FOR FORECLOSURE BEGUN BEFORE PASSING OF MORTGAGORS AND PURCHASERS RELIEF ACT, 1915—PRINCIPAL AND INTEREST IN ARREAR—RIGHTS OF MORTGAGEES UNDISTURBED BY ACT—SEC. 4, SUB-SEC. 3, OF ACT—LEAVE TO PROCEED UNNECESSARY—COSTS OF MOTION.

Hind v. Gidlow, 8 O.W.N. 327.

(§ VI B-75)—DEFAULT IN PAYMENT OF PRINCIPAL—ACTION FOR PRINCIPAL AND INTEREST—PAYMENT BY MORTGAGOR—CLAIM FOR BONUS—AMENDMENT—DISCRETION—REFUSAL.

Warren v. Cairns, 9 O.W.N. 232.

C. WHO MAY FORECLOSE; PARTIES.

(§ VI C-80)—PRACTICE—WRIT OF SUMMONS—SPECIALLY ENDORSED WRIT—MORTGAGE—FORECLOSURE—PARTIES—OWNER OF EQUITY OF REDEMPTION—APPEARANCE WITHOUT AFFIDAVIT—RULES OF COURT.

Palter v. Sher, 9 O.W.N. 49.

(§ VI C-80)—FORECLOSURE—COVENANT FOR PAYMENT—TITLE—QUIT CLAIM DEED—MISTAKE—REFORMATION—HUSBAND AND WIFE—FRAUD—UNDUE INFLUENCE—EVIDENCE—ASSIGNMENT OF INTEREST BY ONE OF SEVERAL MORTGAGEES PENDENTE LITE—ADDITION OF ASSIGNEE AS PARTY—RULE 300—RECOVERY ON COVENANT—ABILITY TO RE-CONVEY—FORM OF JUDGMENT—PAYMENT INTO COURT—LIEN FOR UNPAID PURCHASE-MONEY—COSTS.

Naiman v. Wright, 8 O.W.N. 492, 9 O.W.N. 165.

(§ VI C-82)—PARTIES—MORTGAGE ACTION—ADDITION OF NEW DEFENDANTS—PROPOSED PARTIES NOT NOTIFIED.

Mills v. Tibbetts, 9 O.W.N. 125.

E. RELIEF; DECREE; EFFECT AS TO FUND.

(§ VI E-90)—RELIEF AGAINST FORFEITURE—STATUTORY COVENANT FOR ACCELERATION UPON DEFAULTS—MODIFICATION.

Where a mortgage was made pursuant to the Short Forms of Mortgages Act, but contained additional covenants and provisions, it was held, that a provision for acceleration of the time for payment of the principal upon default as to any of the covenants or provisions was an addition to or qualification of the statutory covenant for acceleration upon default of payment of interest and for relief upon payment of arrears of interest, and the same addition or qualification should be read into the power to relieve, so that where default was made in respect of the covenant for payment of taxes, the mortgagors should,

upon payment of taxes, be relieved from immediate payment of the principal. And so as to a provision requiring the payment as an indemnity of three months' interest in advance, in addition to the payment of the arrears of interest: the mortgagors, being relieved from the consequences of default, upon payment of interest up to date, should not be required to pay a sum, in the nature of a penalty, for interest in addition to the future interest. The Court has power to relieve against oppressive and unfair forfeiture. [Kilmer v. B.C. Orchard Lands Ltd., [1913] A.C. 319, and Empire Loan and Savings Co. v. McRae, 5 O.L.R. 710, referred to.] The mortgagee was ordered to pay the costs of litigation occasioned by her unfounded claims. Legislation in regard to mortgages similar to that protecting the holders of fire insurance policies, in respect of additions to the statutory conditions, suggested.

Schwartz v. Williams, 35 O.L.R. 33, 9 O.W.N. 235.

[There was an appeal by the defendant from the judgment of Middleton, J., in favour of the plaintiffs as above; but, after the appeal had been in part heard by a Divisional Court of the Appellate Division, on December 17, 1915, a settlement was effected between the parties, and the judgment was varied by the Court, by consent, according to the terms of the settlement.]

(§ VI E-90)—DECREE NISI—PARTIES—REPRESENTING MORTGAGOR.

A person, who has not got the mortgagor's estate to pay with, does not properly represent the mortgagor's estate in a foreclosure action, and where the estate is only so represented a decree nisi will only be made on condition that if default be made in compliance therewith evidence is produced to shew that the party to the action has the mortgagor's estate under his control so as to make redemption possible.

Canada Life v. Cole, 7 W.W.R. 1207.

(§ VI E-90)—FORECLOSURE—FORM OF JUDGMENT.

Campbell v. Mazur, 24 D.L.R. 893, 32 W.L.R. 439.

(§ VI E-90)—ACTION FOR FORECLOSURE—ENTRY OF JUDGMENT—APPLICATION FOR STAY OF PROCEEDINGS—MORTGAGORS AND PURCHASERS RELIEF ACT, 1915—PROCEEDINGS STAYED ON PAYMENT OF INTEREST IN ARREAR.

Tutty v. Heller, 8 O.W.N. 429.

(§ VI E-90)—ACTION FOR FORECLOSURE—APPLICATION FOR LEASE TO CONTINUE—MORTGAGORS' AND PURCHASERS' RELIEF ACT, 1915—STAY OF PROCEEDINGS ON PAYMENT OF ARREARS AND COSTS.

Dolgoff v. Kenen, 8 O.W.N. 431.

(§ VI E-90)—ACTIONS FOR FORECLOSURE—MORTGAGORS AND PURCHASERS RELIEF ACT, 1915.

Paterson v. Gross, 8 O.W.N. 431.

(§ VI E-90) — FORECLOSURE — REDEMPTION — MORTGAGORS AND PURCHASERS RELIEF ACT, 1915—CONFIRMATION OF PROCEEDINGS IN MASTER'S OFFICE.
Gilbert v. Reynolds, 8 O.W.N. 434.

(§ VI E-90)—EXCESSIVE RATE OF INTEREST—ONTARIO MONEYLENDERS ACT, R.S.O. 1914, CH. 175, SEC. 4—"HARSH AND UNCONSCIONABLE TRANSACTION"—REDUCTION OF INTEREST—JUDGMENT—ACCOUNT—FORECLOSURE.

Lavine v. Sonshine, 8 O.W.N. 439.

(§ VI E-90)—ESTATE PASSING—ESTOPPEL—CHARGE ON LAND—SALE—EQUITABLE RELIEF.

Miller v. Buchan, 8 O.W.N. 466.

(§ VI E-90)—MORTGAGORS AND PURCHASERS RELIEF ACT, 1915—INTEREST—LEAVE TO PROCEED FOR FORECLOSURE OR SALE.

Re Central Canada Loan, 8 O.W.N. 522.

(§ VI E-90)—ACTION ON MORTGAGOR'S COVENANT FOR PAYMENT—MOTION UNDER MORTGAGORS AND PURCHASERS RELIEF ACT, 1915, FOR LEAVE TO PROCEED—SCOPE AND MEANING OF ACT—ABILITY OF MORTGAGOR TO PAY—RIGHT OF MORTGAGOR TO INDEMNITY FROM PURCHASER SUBJECT TO MORTGAGE—APPREHENSION AS TO SOLVENCY OF PURCHASER.

Beawetherick v. Griesman, 8 O.W.N. 439, 566.

(§ VI E-90)—ACTION FOR FORECLOSURE—ENTRY OF JUDGMENT—APPLICATION FOR STAY OF PROCEEDINGS—LARGE ARREARS OF INTEREST AND TAXES—MORTGAGORS AND PURCHASERS RELIEF ACT, 1915—DISMISSAL OF APPLICATION.

Tutty v. Heller, 9 O.W.N. 111.

(§ VI E-90)—FORECLOSURE—FINAL ORDER—JUDGMENT OF SUPREME COURT OF CANADA—PROOF OF DEFAULT—ENTRY OF JUDGMENT IN SUPREME COURT OF ONTARIO—PRACTICE—ISSUE OF ORDER—MORTGAGORS AND PURCHASERS RELIEF ACT.

Willson v. Thomson, 9 O.W.N. 140.

(§ VI E-90)—JUDGMENT ON DEFAULT OF APPEARANCE IN MORTGAGE ACTION—REFERENCE—REPORT—NOTICE OF FILING—NECESSITY FOR—RULES 35, 429.

Currie v. Sperer, 9 O.W.N. 174.

(§ VI E-90)—ACTION FOR FORECLOSURE—APPLICATION FOR SUMMARY JUDGMENT—LEAVE TO DEFEND—SUGGESTED DEFENCE—DECEPTION PRACTISED ON FOREIGNERS—PURCHASE OF LAND WITH AGREEMENT FOR RESCISSION IF PURCHASERS DISSATISFIED—AGREEMENT SUPERSEDED BY CONVEYANCE AND MORTGAGE.

Walkey v. Yurtas, 9 O.W.N. 290.

F. STRICT FORECLOSURE; FORECLOSURE BY ADVERTISEMENT.

(§ VI F-97)—FORECLOSURE DECREE—STAY OF PROCEEDINGS OR SALE—LEAVE TO BID. In foreclosure proceedings an order may

be made that upon payment of interest at the rate set out in the mortgage upon moneys due for principal, interest and costs, proceedings be stayed until conditions improve, and that, in default, the lands may be offered for sale at an upset price, with liberty to all parties to bid.

Benjamin v. Marsan, 8 W.W.R. 358.

G. SALE.

(§ VI G 1-100)—MORTGAGORS AND PURCHASERS RELIEF ACT—LEAVE TO CONTINUE SALE—MORTGAGOR FAILING TO PAY INTEREST, TAXES OR INSURANCE—APPLICATION UNNECESSARY.

Toronto General Trusts Co. v. Ritchie, 22 D.L.R. 905, 8 O.W.N. 328.

(§ VI G 1-100)—CONSENT JUDGMENT FOR IMMEDIATE SALE—STAY OF OPERATION PENDING OUTCOME OF CLASS ACTION TO DETERMINE VALIDITY OF MORTGAGE—VALIDITY UPHOLD BY SUPREME COURT OF CANADA—PENDING APPLICATION FOR LEAVE TO APPEAL TO PRIVY COUNCIL—NO APPEALS OF RIGHT—APPLICATION FOR FURTHER STAY GRANTED UPON ONEROUS TERMS—SECURITY—PAYMENT INTO COURT—RULES 369, 370—PRIVY COUNCIL APPEALS ACT, R.S.O. 1914, CH. 54—MORTGAGORS AND PURCHASERS RELIEF ACT, 1915, SEC. 4 (3).

Hughes v. Cordova Mines, 8 O.W.N. 372.

(§ VI G 1-102)—REFERENCE FOR SALE—ADVERTISING—PROCEDURE IN MASTER'S OFFICE.

Gilbert v. Reynolds, 7 O.W.N. 827.

(§ VI G 3-110)—SUMMARY JUDGMENT—MORTGAGE ACTION—FACTS AND CIRCUMSTANCES ENTITLING DEFENDANTS TO DEFEND—MARSHALLING OF ASSETS—JUDGMENT FOR SALE OF PART OF MORTGAGED LAND—RESERVATION OF RIGHT TO APPLY FOR SALE OF PART TAKEN BY MUNICIPAL CORPORATION FOR STREET.

McCowan v. City of Toronto, 7 O.W.N. 815.

(§ VI G 4-121)—SALE UNDER POWER—PURCHASE BY MORTGAGEE—VALIDITY.

A simulated sale by the mortgagee of the mortgaged premises to himself in pretended exercise of the power of sale contained in the mortgage will be declared invalid and the mortgagee compelled to account on the basis of the price he obtained on the later sale he himself made. [Gordon v. Holland, 10 D.L.R. 734, 82 L.J.P.C. 81; Knox v. Gye, L.R. 5 H.L. 656; DeBussche v. Alt., 8 Ch.D. 286; Watt v. Assets Co., 74 L.J.P.C. 82, referred to.]

Carter v. Bell, 21 D.L.R. 243, 21 B.C.R. 55, 8 W.W.R. 47, 31 W.L.R. 1.

(§ VI G 5-126)—POWER OF SALE—PRETENDED EXERCISE OF—FRAUD—SETTING ASIDE CONVEYANCE.

Chambers v. Le Burtis, 8 O.W.N. 453.

H. SURPLUS; PROCEEDS.

(§ VI H—131)—SALE UNDER POWER IN FIRST MORTGAGE—PAYMENT OF SURPLUS INTO COURT—MOTION BY SECOND MORTGAGEE FOR PAYMENT OUT—NOTICE TO PERSONS INTERESTED.

Re O'Connor & Hamilton Provident, 8 O.W.N. 610, 9 O.W.N. 208.

VII. Redemption.**C. TIME; AMOUNT.**

(§ VII C—155)—INSTRUMENT COVERING TWO PARCELS—CONVEYANCES OF EQUITIES OF REDEMPTION BY MORTGAGOR TO DIFFERENT PURCHASERS—RELEASE OF ONE PARCEL FROM MORTGAGE—GIVING TIME TO MORTGAGOR—PRINCIPAL AND SURETY—MARSHALLING SECURITIES—REFERENCES—COSTS.

Halstead v. Sonshine, 8 O.W.N. 603.

MOTIONS AND ORDERS.

I. IN GENERAL.
II. ORDERS.

I. In general.

(§ I—2)—EX PARTE ORDER—LEAVE TO ISSUE EXECUTION—EXTENDING TIME—DISCRETION—PRACTICE RULES.

A judgment for the payment of money by the defendant was pronounced in favour of the plaintiff on April 19, 1894, but was not entered until April 15, 1914; on that day an order was made by the Master in Chambers, on the ex parte judgment, and execution was issued accordingly. There was no doubt that the judgment was unsatisfied. The defendant moved to set aside the order, but not within the time allowed by r. 217. The Judge who heard the motion extended the time under r. 176, and set aside the Master's order on the ground that it was improperly made ex parte:—Held, notwithstanding that the judgment was unsatisfied, and that the right to enforce it might be lost by the plaintiff's slip, that the Judge's order was right and could not be reversed on appeal—r. 213 being explicit as to the necessity for notice of the application being given to the defendant, and the case not falling under r. 216.

Joss v. Fairgrieve, 32 O.L.R. 117, 7 O.W.N. 184.

(§ I—4)—AFFIDAVITS—CROSS-EXAMINATION—DISCRETION OF COURT.

The discretionary power given to a Judge under rules of Court to order a cross-examination on an affidavit used on a motion is to be judicially exercised, and where it appears that the discretion in refusing a cross-examination was not exercised upon a proper ground, the Appellate Court will reverse the order. [Goodchild v. Bethel, 19 D.L.R. 161, referred to.]

Ewing v. McGill, 22 D.L.R. 834, 8 A.L.R. 105, 7 W.W.R. 1147, 30 W.L.R. 452.

(§ I—4)—MOTION BEFORE APPELLATE DIVISION—EXAMINATION OF WITNESS—LEAVE OF COURT.

An appointment issued without leave of the Divisional Court to examine witnesses by a party making a motion to a Divisional Court of the Appellate Division and proposing to read at the hearing of the motion the depositions of the witnesses, is irregular and will be set aside.

Crowley v. Boving & Co., 23 D.L.R. 696, 33 O.L.R. 491, 8 O.W.N. 219.

(§ I—4)—AFFIDAVIT—SERVICE.

Pursuant to the rule of practice No. 47, every motion should be supported by a declaration under oath which should be served on the opposite party, and the Court will not allow the omission of the declaration to be supplied by an examination of the opposite party under oath.

Charpentier v. Hébert, 48 Que. S.C. 13.

II. Orders.

(§ II—7)—ORDER UNDER CREDITORS' RELIEF ACT—IRREGULARITIES—AMENDMENT.

Where an order made by a District Court Judge was not intitled in the matter of the Creditors' Relief Act, but it was plain from the nature of the order that it was made under that Act, such Judge has power under sec. 16 to amend the order to include the omitted words and generally to cure irregularities and defects in his prior order.

Royal Bank v. Lee & Girard, 23 D.L.R. 216, 30 W.L.R. 577.

[Affirmed in 23 D.L.R. 219, 8 S.L.R. 17.]

(§ II—8)—IRREGULARITY OF JUDGE'S SIGNATURE—VALIDITY.

Where an application to a District Court Judge was clearly made under sec. 8 of the Creditors' Relief Act, R.S.S. ch. 63, but by inadvertence the Judge signed the order over the designation of Local Master (L.M.), the latter may be treated as surplusage, and will not affect the validity of the order.

Royal Bank v. Lee & Girard, 23 D.L.R. 216, 30 W.L.R. 577.

[Affirmed in 23 D.L.R. 219, 8 S.L.R. 17.]

MOTOR VEHICLES.

See Automobiles.

Autobus lines, authority to operate, see Municipal Corporations; Street Railways.

MUNICIPAL BONDS.

See Bonds, III; Municipal Corporations.

MUNICIPAL CORPORATIONS.**I. IN GENERAL.**

A. Incorporation.

B. Division or annexation.

C. Dissolution, succession or substitution.

D. Charter.

II. POWERS, DUTIES AND LIABILITIES.

A. In general.

B. Delegation of power.

- c. Legislative functions; ordinances; by-laws.
- d. Contracts generally; ultra vires contracts.
- e. Borrowing money; indebtedness.
- f. As to lights, water supply and other property and privileges.
- g. Liability for damages.
- gg. Collection of claims against.
- h. As to taxes.
- i. Examination of corporate books and records.

III. POWERS OF OFFICERS.

Election of officers, see Election; Officers.
Municipal building regulations, see Buildings.

Powers as to highways and streets, liabilities for injuries on, see Highways.

License by, see License, II.

Mandatory proceedings against, see Mandamus; Injunction.

As to water supply, liabilities, see Waters.

Taxation and assessments by, see Taxes.

Assessments for school purposes, see Schools.

Annotations.

Authority to exempt from taxation: 11 D.L.R. 66.

By-laws and ordinances regulating the use of leased property; private markets: 1 D.L.R. 219.

Closing or opening streets: 9 D.L.R. 490.

Defective highway; notice of injury: 13 D.L.R. 886.

Drainage; natural watercourse; cost of work; power of referee: 21 D.L.R. 286.

Power to pass by-law regulating building permits: 7 D.L.R. 422.

License; power to revoke license to carry on business: 9 D.L.R. 411.

I. In general.

B. DIVISION OR ANNEXATION.

(§ I B—11)—ANNEXATION OF PART OF TOWNSHIP TO VILLAGE—POWERS OF MUNICIPAL BOARD.

The Ontario Municipal Board has jurisdiction under secs. 17 and 20 of the Municipal Act, R.S.O. 1914, ch. 192, to make an order annexing part of a township to a village, and by virtue of sec. 39 (1) of the Ontario Railway and Municipal Board Act, R.S.O. 1914, ch. 186, it also has the power to make such order suspensive in its operation.

Bell v. Town of Burlington, 25 D.L.R. 269, 34 O.L.R. 410, 9 O.W.N. 182, 404.

D. CHARTER.

(§ I D—25)—CONSTRUCTION OF.

The powers and responsibilities contained in the Municipal Act, B.C. 1914, ch. 52, apply to all municipalities, and should not be held to be impaired by a collateral statute with restricted application such as the Shaughnessy Settlement Act, B.C. 1914,

ch. 96, unless that intention is expressly shewn.

Fletcher v. Point Grey, 21 D.L.R. 819.

(§ I D—25)—REVOCATION OF CHARTER—POWER OF PROVINCE AFTER INCORPORATION—USURPATION OF POWER—EXEMPTING RAILWAY FROM TAXATION—PROPERTY SITUATE WITHIN MUNICIPAL TERRITORY.

E. & N.R. Co. v. City of Courtenay, 25 D.L.R. 821, 9 W.W.R. 618, 32 W.L.R. 914.

II. Powers, duties and liabilities.

A. IN GENERAL.

(§ II A—30)—LIABILITY FOR COUNSEL FEES—REPRESENTATION BEFORE COMMISSION.

A municipality is not liable for the fees of counsel not retained by it merely because they represented some of its officers and citizens before a Royal Enquiry Commission.

Desaulniers v. Montreal, 24 Que. K.B. 135.

(§ II A—31)—POWERS OVER POLICE DEPARTMENT—INVESTIGATION—POLICE BOARD.

Section 278, ch. 192, of the Municipal Act, R.S.O. 1914, directing a Judge of the County Court to investigate upon a resolution of the City Council any matter relating to malfeasance or misconduct on the part of an officer or servant of the corporation, does not apply to an inquiry into charges of misconduct in the police force, which by sec. 354, etc., is within the jurisdiction of the Board of Police Commissioners.

City of Berlin v. County Judge of Waterloo, 22 D.L.R. 296, 33 O.L.R. 73, 7 O.W.N. 588.

(§ II A—31)—POLICE STATION—EQUIPMENT OF—FURNITURE—STATIONERY.

Under R.S.O. 1914, ch. 88, sec. 23, the County Council shall furnish a police magistrate for the county with a proper office, together with fuel, light and furniture, and (following Newsome v. County of Oxford, 28 O.R. 442) furniture shall include stationery for such office, and it is immaterial whether the appointment of such magistrate is made under sec. 13 or sec. 14 of the said Act, or that such magistrate may have a private office of his own as a barrister or solicitor in such township.

Holmested v. Corp. of County Huron, 24 D.L.R. 561.

B. DELEGATION OF POWER.

(§ II B I—42)—DELEGATING BRIDGE CONSTRUCTION TO CORPORATION—INTEREST OF RATEPAYER TO ATTACK PROCEEDINGS—PRESCRIPTION.

A municipal corporation of a county, which has decided to construct a county bridge and has adopted a procès-verbal stating the work to be done, but without determining the cost of it, cannot delegate to a local corporation the adjudication of the enterprise of the construction and the execution of the work. In making such delegation

it acts *ultra vires*, which a ratepayer has a sufficient interest to proceed to have the proceedings annulled by direct action. The prescriptions of the Municipal Code respecting appeal to the County Council or to the Circuit Court do not apply in such case, as there is a distinction in the contestations between acts illegally performed by a municipal corporation in the exercise of its powers and those *ultra vires*.

Forest v. Parish of L'Assomption, 48 Que. S.C. 151.

C. LEGISLATIVE FUNCTIONS; ORDINANCES; BY-LAWS.

(§ II C 1—50)—LOCAL IMPROVEMENT ACT—ASSESSMENTS.

The general scheme of the Local Improvement Act, R.S.O. 1914, ch. 193, is to authorize the Council to undertake a work, then to execute it, then to procure an assessment roll to be made for imposing the tax; the latter follows automatically on the work being authoritatively undertaken and fully executed, and there is no appeal except that provided from the Court of Revision.

Re Kemp and City of Toronto, 21 D.L.R. 833, 7 O.W.N. 704.

(§ II C 1—50)—VALIDITY OF BY-LAW—APPROVAL OF RAILWAY AND MUNICIPAL BOARD.

In order that the validity of a municipal money by-law shall not be open to question in any Court, under the Municipal Act, R.S.O. 1914, ch. 192, sec. 295, by reason of the approval thereof by the Ont. Railway and Municipal Board, such approval must remain effective when the proceedings in which the by-law is attacked come on to be heard; the Court will have jurisdiction to quash where the Board's approval order existing when the notice of motion to quash was served was afterwards withdrawn by the Board. [*Re Fowler and Waterdown*, 7 O.W.N. 309, followed; *Re Dougherty and East Flamboro*, 6 O.W.N. 487, and *Re Shaw and St. Thomas*, 18 P.R. 454, referred to.]

Re Harper & Tp. of East Flamborough, 22 D.L.R. 547, 32 O.L.R. 490, 7 O.W.N. 468.

(§ II C 3—70) — CLOSING OF HIGHWAYS — POWERS OF MUNICIPAL COUNCIL.

In the case of the closing of a highway the question of what is or is not in the public interest is a matter to be determined by the judgment of the Municipal Council, and if within the limits of its powers, is not open to review by the Court; and a by-law will not therefore be set aside on the ground that it was passed in the interest of a certain person where there is nothing to shew that the action of the Council was in bad faith.

Jones v. Tp. of Tuckersmith; *Re Jones & Tp. of Tuckersmith*, 23 D.L.R. 569, 33 O.L.R. 634, 8 O.W.N. 344.

(§ II C 3—70) — OPENING OF HIGHWAY — "TRAIL"—VALIDITY OF PROCEDURE.

Section 196 (5) of the Rural Municipalities Act (Alta.), empowering the Council of

every municipality to pass by-laws for the opening and maintaining of temporary roads, is permissive and not imperative, and permits the exercise of such powers, under sec. 185 of the Act, under the power of resolution; nor will such resolution be deemed bad for want of certainty by a mere reference to the opening of an existing "trail" without a more definite description. [*Bernardin v. North Dufferin*, 19 Can. S.C.R. 581, followed; *Young v. Leamington*, 8 A.C. 517; *Waterous v. Palmerston*, 21 Can. S.C.R. 556, distinguished.]

Blomfield v. Rur. Mun. of Starland, 25 D.L.R. 43, 9 W.W.R. 552, 32 W.L.R. 905, affirming 21 D.L.R. 859, 31 W.L.R. 573.

(§ II C 3—71) — CAB-DRIVING REGULATIONS — LOITERING IN STREET—SUFFICIENCY OF CONVICTION.

Whether or not the accused cabdriver loitered about the streets with his cab in contravention of a police commissioners' by-law, subject to which he obtained his cab license, is a question of fact for the determination of the Justice which will not ordinarily be disturbed on a motion to quash a summary conviction under the by-law.

Rex v. Aitcheson, 25 Can. Cr. Cas. 36, 9 O.W.N. 65.

(§ II C 3—90)—REGULATION OF STREET RAILWAYS—REMOVAL OF SNOW FROM TRACKS—SAFE PASSAGE FOR VEHICLES.

A provision in a municipal by-law requiring an electric railway company to remove accumulations of snow or ice from their tracks to afford a safe passage for "sleighs and other vehicles," is not *ejusdem generis* intended in its limited sense, and includes also the safe passage for wheeled vehicles, and a failure of the railway company to comply with a written demand by the city's engineer to remove the snow entirely from the streets will entitle the municipality to recover, under the terms of the by-law, the expenses it had incurred in carrying out the work.

City of Winnipeg v. Winnipeg Electric R. Co., 25 D.L.R. 308, 9 W.W.R. 889.

(§ II C 3—90)—VALIDITY AND EXTENT OF POWER—EXCLUSIVE FRANCHISE TO OPERATE AUTOBUS LINES—ATTACK BY SHAREHOLDER OF TRAMWAY COMPANY—STATUS OF PLAINTIFF.

Assuming to act under authority of an existing by-law regulating traffic by autobuses, and in virtue of a special statute (2 Geo. V., ch. 56 (Que.)), and the general powers conferred by the city charter, the Municipal Council passed a resolution authorizing the corporation of the municipality to enter into a contract granting a joint stock company the exclusive privilege of operating autobus lines on certain streets in the city and charging fares for the carriage of passengers. An action was brought by a shareholder in a tramway company (which held similar privileges), who was also a municipal ratepayer attacking the validity

of the by-law and of a contract made by the municipal corporation in pursuance of the resolution on the grounds that there was no authority for the granting of such exclusive privileges; that such powers, if they existed, could only be exercised by means of a by-law, and that a provision in the contract whereby the municipality became entitled to certain shares in the stock of the autobus company was ultra vires of the municipal corporation:—Held, affirming the judgment appealed from, 23 Que. K.B. 338 (Idington and Anglin, JJ., dissenting), that in the absence of evidence of special injury sustained by the plaintiff, he had no status entitling him to bring the action. Per Idington, J., dissenting: The plaintiff was entitled to institute the action by virtue either of his quality as a shareholder in the tramway company, the privileges of which might be injuriously affected, or as a ratepayer of the municipality. Per Anglin, J., dissenting: The plaintiff could bring the action in his capacity as a ratepayer of the municipality. Per Fitzpatrick, C.J., and Duff and Brodeur, JJ.: An appropriate remedy in such a case would be by action prosecuted by the Attorney-General of the province under art. 978 of the Code of Civil Procedure. Per Duff, J.: Such an action might be prosecuted either by the municipal corporation itself or by an authority representing the general public. Validity of the by-law, resolution and contract in question discussed by Idington, Duff, and Anglin, JJ.

Robertson v. City of Montreal, 52 Can. S.C.R. 30, 26 D.L.R. 288.

[Leave to appeal to Privy Council refused December 18, 1915.]

(§ II C 3—94z) — **CONTRACTS — ELECTRIC LIGHT COMPANY—ERECTION OF POLES IN HIGHWAY—REMOVAL AT INSTANCE OF MUNICIPAL CORPORATION—EXPENSE OF, BY WHOM BORNE—CONSTRUCTION OF AGREEMENTS—CONTROL OF HIGHWAYS.**

Interurban Electric Co. v. Toronto, 8 O.W.N. 288.

(§ II C 3—104) — **NUISANCES—SMOKE REGULATION—RAILWAY ROUNDHOUSE.**

The smokestack of a locomotive engine is not a flue stack or chimney within clause 45 of sec. 400 of the Municipal Act, R.S.O. 1914, ch. 192, which empowers municipal councils to pass by-laws for smoke regulation; and a railway company is not liable to conviction under clause 45 for the discharge of smoke from its locomotives while in the roundhouse. [R. v. C.P.R. Co., 23 Can. Cr. Cas. 487, affirmed on a different ground.]

Rex v. C.P.R. Co., 25 D.L.R. 444, 24 Can. Cr. Cas. 226, 33 O.L.R. 248, 8 O.W.N. 60.

(§ II C 3—111a) — **BY-LAW REGULATING TRANSIENT TRADERS—WHEN OFFENCE.**

A conviction under a municipal by-law regulating transient traders can be supported only where the offence is within the precise terms of the by-law itself, although the powers of the municipality had been extended so as to enable it to regulate the acts

relied upon as constituting the offence. [R. v. Roche, 4 Can. Cr. Cas. 64, 32 O.R. 20; R. v. Preston, 1 O.W.N. 983, referred to.]

Rex v. Pure Milk Corp., 25 Can. Cr. Cas. 47, 9 O.W.N. 120.

(§ II C 3—111a) — **HAWKERS AND PEDLARS' BY-LAW—OBTAINING ORDERS NO "SALE"—QUASHING CONVICTION.**

The decision of Meredith, C.J.C.P., was reversed, and the convictions of two servants of an oil company for offences against a Hawkers and Pedlars' By-law of a county, quashed, upon the ground that the acts of the accused—obtaining from purchasers orders on the oil company to ship to the purchasers named quantities of oil, to be delivered at the places named in the orders, cash on delivery—did not constitute a "sale" within the meaning of the by-law, which followed the wording of sec. 416 of the Municipal Act, R.S.O. 1914, ch. 192, as amended by 5 Geo. V. ch. 34, secs. 32, 33. [Rex v. St. Pierre, 4 O.L.R. 76, and Rex v. Pember, 3 O.W.N. 1216, followed.]

Re Garnham; Re Richardson, 35 O.L.R. 54, 9 O.W.N. 172, 250, reversing 34 O.L.R. 545, 9 O.W.N. 117.

(§ II C 3—114b) — **REGULATION OF POOL ROOMS—REASONABLENESS.**

A by-law limiting the number of billiard and pool-room licenses to one is a proper exercise of the municipal police power, and reasonable, and does not contravene sec. 254 of the Municipal Act, R.S.O. 1914, ch. 192, providing against the creation of monopolies. [Re McCracken, etc., 23 O.L.R. 81; Rowland v. Town of Collingwood, 16 O.L.R. 272, distinguished.]

Re Stewart & Town of St. Mary's, 24 D.L.R. 26, 34 O.L.R. 183, 8 O.W.N. 509.

(§ II C 3—114b) — **LICENSE—CONFIRMATION—REVOCATION.**

The Municipal Council, in confirming a certificate for the issue of a license, exercises judicial and administrative functions which the law declares to be final, and therefore the confirmation cannot subsequently be revoked.

Paquet v. Plante, 23 D.L.R. 737, 24 Que. K.B. 13.

D. CONTRACTS GENERALLY; ULTRA VIRES CONTRACTS.

(§ II D—140) — **TENDERS—FAIR WAGE CLAUSE—EXTENT OF AUTHORITY.**

A Municipal Council may validly stipulate as a condition under which tenders are called for that the contract awarded to the successful tenderer shall contain a fair-wage clause to the effect that all employees of the contractor shall in respect of their work in the execution of the contract receive union wages or the prevailing rate of wages for their work; the authority of the municipality in this regard is not restricted to work to be done under the contract within the territorial limits of the municipality, but extends to a contract for the purchase of

crushed stone where the work, or the bulk of the work, is to be done outside such limits. [*Kelly v. Winnipeg*, 12 Man. L.R. 87, approved; *Crown Tailoring Co. v. Toronto*, 33 O.L.R. 92n, not followed.]

Rogers v. City of Toronto, 21 D.L.R. 475, 33 O.L.R. 89, 7 O.W.N. 600.

(§ II D-142)—**ILLEGAL TENDERS — ATTACK BY RATEPAYER.**

It is an act ultra vires of a municipal corporation, after calling for tenders for supply of materials, to disregard without justification the lowest bidder and allowing a higher bidder to amend his bid, which the Court, at the instance of a ratepayer having a special interest in the transaction, will enjoin the municipality from entering into the contract.

Dubuc v. Montreal & Aztec Oil Co., 48 Que. S.C. 366.

(§ II D-143)—**CONTRACT FOR GAS WORKS—WHAT CONSTITUTES — RESOLUTION OF COUNCIL.**

A resolution by a municipal Council authorizing a contract with a corporation for gas drilling operations, which, if satisfactory, are later to be taken over by the municipality, is a mere expression of willingness, but not necessarily in itself a contract.

Rex ex rel. La Fleche v. Sheppard, 24 D.L.R. 404, 9 A.L.R. 1, 8 W.W.R. 1020.

(§ II D-146)—**MODE OF CONTRACTING—POWERS OF COMMISSIONERS—RATIFICATION BY COUNCIL.**

Under the Edmonton Charter the power of the commissioners is subject to the supervision of the Council, and when, after submitting to the Council, the latter authorized a particular contract, the commissioners have no authority to make a contract in conflict with the Council's authorization; nor will a resolution of the Council authorizing tests of the proposed undertaking and the submission of a by-law to raise funds presumably necessary under the agreement, in the absence of knowledge of the terms thereof, operate as a ratification of the agreement.

Livingstone v. Edmonton Industrial & City of Edmonton, 25 D.L.R. 313, 9 W.W.R. 794, varying as to costs, 24 D.L.R. 191, 8 W.W.R. 976, 31 W.L.R. 609.

(§ II D-146)—**AGREEMENT NOT CONFORMING TO RESOLUTION—MODE OF SETTING ASIDE.**

It is not necessary to follow the procedure under sec. 578 of the Edmonton charter by a motion to quash a resolution where no exception is taken to the resolution, but only to an agreement because not in accord with the resolution.

Livingstone v. Edmonton Industrial & City of Edmonton, 25 D.L.R. 313, 9 W.W.R. 794, varying as to costs 24 D.L.R. 191, 8 W.W.R. 976, 31 W.L.R. 609.

(§ II D-148)—**CONTRACTS WITH UNINCORPORATED ASSOCIATION—EFFECT ON SUBSEQUENT INCORPORATION.**

A resolution of a Municipal Council which

authorizes the municipality to enter into an agreement with an unincorporated association has no binding effect on the corporation subsequently formed of the unincorporated body.

Livingstone v. City of Edmonton, 24 D.L.R. 191, 8 W.W.R. 976, 31 W.L.R. 609.

[Varied as to costs in 25 D.L.R. 313.]

E. BORROWING MONEY; INDEBTEDNESS.

(§ II E 1-152)—**CONTRACTING DEBTS NOT PAYABLE WITHIN CURRENT YEAR—PURCHASE OF SITE FOR TOWN AND FIRE HALL—ILLEGAL PROCEEDINGS—RIGHT TO MANDAMUS.**

Manning v. Bergman, 25 D.L.R. 797, 9 W.W.R. 220, 32 W.L.R. 519.

F. AS TO LIGHTS, WATER SUPPLY AND OTHER PROPERTY AND PRIVILEGES.

(§ II F 1-170)—**LIGHT AND WATER FRANCHISES—TIME PERIODS—LEGISLATIVE REGULATIONS.**

In a statute authorizing the Council of a municipality to pass by-laws authorizing "any contract with any person or corporation to supply light or water for the use of the corporation for any period not exceeding five years," the words "for the use of the corporation" do not confine the operation of the statute to contracts requiring the Council to make payments from the public treasury for corporate purposes, but the statute applies as well to a contract to supply the inhabitants individually with electric light and power.

Weeks v. Vegreville (Town), 9 A.L.R. 56.

[See 25 D.L.R. 795.]

(§ II F 1-170)—**FRANCHISE FOR ELECTRIC LIGHT SYSTEM—TERMINATION BY LAPSE OF TIME—POWER OF MUNICIPALITY TO REMOVE APPLIANCES—DELAY BY OWNER—REASONABLE TIME.**

Weeks v. Town of Vegreville, 25 D.L.R. 795, 9 W.W.R. 165, 32 W.L.R. 450.

(§ II F 1-170)—**DISTRIBUTION AND SUPPLY OF ELECTRICAL POWER—PUBLIC UTILITIES ACT, R.S.O. 1914, CH. 204, SECS. 34, 35, 36—MANAGEMENT OF WORKS AND OPERATIONS ENTRUSTED TO COMMISSION—COMPANY AUTHORIZED TO SUPPLY ELECTRIC POWER—ERECTION OF POLES AND WIRES IN STREETS OF MUNICIPALITY—BY-LAW OF MUNICIPAL CORPORATION AUTHORIZING USE OF COMPANY'S POLES FOR STRINGING WIRES OF CORPORATION—RESTRICTION TO SUPPLY OF POWER AND LIGHT FOR USE OF CORPORATION—INTERFERENCE WITH COMPANY'S APPLIANCES—DECLARATION—INJUNCTION—DAMAGES.**

Lincoln Electric L. & P. Co. of St. Catharines v. Hydro-Electric Com. of St. Catharines, 7 O.W.N. 688, 9 O.W.N. 159.

(§ II F 1—171)—ELECTRIC LIGHT—ERECTION OF POLES—LIMITS OF MUNICIPALITY—TERRITORY SUBSEQUENTLY ADDED—AMBIGUITY—INTENTION.

[Toronto Electric Light Co. v. Toronto, 20 D.L.R. 958, 31 O.L.R. 387, reversed.]

Toronto Electric Light Co. v. City of Toronto, 21 D.L.R. 859, 33 O.L.R. 267, 8 O.W.N. 87.

(§ II F 1—174)—GAS LEASES—ASSENT OF RATEPAYERS.

By virtue of secs. 223 and 227 of the City Charter (Edmonton, Alta.), the Municipal Council has no power to commit the city on a lease of natural gas rights, unless with the assent of a majority of the burgesses.

Livingstone v. City of Edmonton, 24 D.L.R. 191, 8 W.W.R. 976, 31 W.L.R. 609.

[Varied as to costs in 25 D.L.R. 313.]

(§ II F 1—174)—WORKS AND UTILITIES—GAS WORKS—INTERESTED PARTIES—MEMBERS OF COUNCIL.

Gas works are not the "works" or "utilities" covered by the Edmonton Charter, and therefore not within the purview of sec. 470, which prohibits any member of Council or commissioner from being interested in any contract in connection with the works under the charter.

Rex ex rel. La Fleche v. Sheppard, 24 D.L.R. 404, 9 A.L.R. 1, 8 W.W.R. 1020.

(§ II F 1—174)—GAS FRANCHISES—"EXCLUSIVE" GRANT OF—EXTENSION OF CITY TERRITORY—APPLICABILITY OF FRANCHISE—ULTRA VIRES.

City of Calgary v. Can. West. Natural Gas Co., 25 D.L.R. 807, 9 W.W.R. 252, 32 W.L.R. 558.

(§ II F 3—188)—POWER TO ACQUIRE DOMINION RAILWAY—ASSENT OF MINISTER.

A municipality may acquire the undertaking of a Dominion railway, but under sec. 299 is without power to operate it under the Railway Act except under the authority of the Minister of Railways and Canals, with the obligation of applying for an enabling Act at the next session of Parliament.

Re Grand Valley R. Co., 18 Can. Ry. Cas. 430.

G. LIABILITY FOR DAMAGES.

(§ II G 1—195)—CONDITION PRECEDENT TO LIABILITY—NOTICE.

It is not necessary that an action for damages which does not arise from a délit or quasi-délit, but from an obligation created by law, should be preceded by the notice of action required by the charter of the city of Montreal.

Del Sole v. City of Montreal, 24 Que. K.B. 550.

(§ II G 1—195)—ACTING IN PURSUANCE OF STATUTORY POWER—SPECIAL DAMAGE TO INDIVIDUAL.

Where a city, acting in the execution of a public trust and for the public benefit, does an act which it is authorized by a statute to

do, and does it in a proper manner, an individual suffering special injury by reason of such act cannot maintain an action. He is without remedy, unless a remedy is provided by the statute. [East Fremantle Corp. v. Annois, [1902] A.C. 213, applied.]

Armour v. City of Regina, 8 S.L.R. 368, 9 W.W.R. 928.

(§ II G 1—195)—LIABILITY FOR ACCIDENT CAUSED BY CHILDREN SKATING ON SIDEWALK—ENFORCEMENT OF REGULATIONS—ARTS. 1053, 1054 C.C.

Payette v. City of Montreal, 25 D.L.R. 857, 47 Que. S.C. 169.

(§ II G 1—203)—REPAIR OF HIGHWAY—INJURY TO HORSE BY DEBRIS.

A municipality corporation is guilty of negligence, if, when repairing the public roads in the municipality, it deposits on the land material taken out containing rusty nails or other waste of demolition. It is therefore liable for the loss of a horse which is injured on this debris.

Maltais v. Village of Pointe-Au-Pic, 48 Que. S.C. 87.

(§ II G 1—205a)—POLE ON STREET—NEGLIGENCE—BURDEN OF PROOF.

Where an act of negligence is committed by a municipality such as to allow a public street to be obstructed by a telephone pole, the plaintiff suing in damages must prove that the negligence was the cause of the accident which resulted in damages.

Lamothe v. Corp. of St. Pierre de Verone, 48 Que. S.C. 481.

(§ II G 2—222)—NEGLIGENT OPERATION OF HIRED MACHINERY—FRIGHTENING HORSES.

Damages sustained by the frightening of horses caused by the negligent operation of a steam waggon hired by a municipality having the control and full power of direction over the engineer furnished with it, renders the municipality not the owner liable therefor, particularly where the cause of the accident is not attributable to any defect in the engine, but to the failure of the municipality to take the necessary precautions. [Donovan v. Laing, [1893] 1 Q.B. 629, followed.]

Mack v. Lake Winnipeg Shipping Co., 24 D.L.R. 128, 25 Man. L.R. 364, 8 W.W.R. 523.

(§ II G 2—222)—OPERATION OF STEAM DRILL—FRIGHTENING HORSES.

A municipality is liable for the consequences of a runaway caused by the noise and fumes from the operation of a steam drill without adopting practicable precautions to avoid the accident.

Deschamps v. City of Montreal, 48 Que. S.C. 351.

(§ II G 2—223)—NEGLIGENCE—REMOVAL OF DANGEROUS SUBSTANCE FROM BURNING BUILDING BY CITY FIREMEN—EXPLOSION AFTER REMOVAL—INJURY TO PERSON—LIABILITY—AGENCY OF FIREMEN FOR OWNER OF BUILDING—FINDINGS OF JURY

—LIABILITY OF CITY CORPORATIONS—EVIDENCE.

Lester v. City of Ottawa, 8 O.W.N. 295, 591.

(§ II G 2—227)—LIABILITY FOR ACTS OF MEAT INSPECTOR—UNLAWFUL CONFISCATION.

The city of Montreal is liable in damages when its inspectors without lawful cause and without complying with the formalities required by law confiscate in a butcher shop meats not fit for consumption.

Gaudreau v. City of Montreal, 48 Que. S.C. 388.

(§ II G 2—228a)—LIABILITY FOR ACTS OF OFFICERS—TOWN CONSTABLES.

The appointment of police officers is devolved upon cities and towns by the Legislature as a convenient mode of exercising a function of government, but this does not render them liable for the unlawful or negligent acts of such police officers even when committed in attempts to enforce ordinances or by-laws of the corporation employing them, as such acts are done by them in their public capacity, and not as agents or servants of the corporation. [*McCleave v. City of Moncton*, 32 Can. S.C.R. 108; *Wishart v. City of Winnipeg*, 4 Man. L.R. 457, followed; *Hafford v. New Bedford*, 82 Mass. 290, approved. See *Pon Yin v. City of Edmonton* (Alta.), 31 W.L.R. 402.—Ed.] *Gibney v. Yorkton*, 31 W.L.R. 523.

(§ II G 2—228a)—ILLEGAL ARREST BY CONSTABLES — LIABILITY — RESPONDEAT SUPERIOR.

Where a constable illegally arrests a person without a warrant and the chief constable approved of the act and detains the prisoner, both are guilty of a trespass. Where police constables appointed by a Justice of the Peace under the Constables Ordinance (C.O. 1905, Alberta), are engaged and paid by a municipal corporation in its efforts to maintain peace in the community, the municipality possesses the like immunities as the Crown, and cannot be held liable for wrongful acts of such constables in their efforts to secure the observance of the law. The doctrine of "respondeat superior" does not apply. [*Griffin v. Coleman*, 4 H. & N. 265, approved; *McCleave v. City of Moncton* 32 Can. S.C.R. 106, followed.]

Pon Yin v. Edmonton, 31 W.L.R. 402, 8 W.W.R. 809.

(§ II G 3—235)—CONSTRUCTION OF DAM — DIVERTING WATER.

A rural municipality in Manitoba is liable in damages for constructing through its servants a dam in the improvement of its roadways and so diverting water from its natural course that more water came upon the plaintiff's farm than would otherwise have reached it. [*Mondor v. Tache*, 11 D.L.R. 620, 23 Man. L.R. 457, and *Stott v. North Norfolk*, 16 D.L.R. 48, 24 Man. L.R. 9, referred to.]

Thorsteinson v. Rur. Mun. of North Norfolk, 22 D.L.R. 34.

(§ II G 3—235)—MANHOLES IN STREETS—DEFECTIVE COVER.

The city of Montreal is responsible for the condition of the manholes in its streets, and is liable in damages for injury caused by a pedestrian falling in; the cover having been removed and improperly replaced by parties unknown.

Spedding v. City of Montreal, 23 D.L.R. 681, 47 Que. S.C. 493.

(§ II G 3—240)—DRAINAGE — JURISDICTION OF REFEREE—COST OF WORK.

Under the Municipal Drainage Act, R.S. O. 1914, ch. 198, sec. 67, sub-sec. a, p. 2, the Drainage Referee has discretion to refuse to allow the work to be carried out, where the cost of the work is out of proportion to the benefit to be derived from it, but such discretion must be exercised upon judicial principles, and before it can be exercised a legal principle must be found underlying such exercise. The engineer making the report authorized by the Drainage Act is justified, where the character of the land permits and where the territory covered is necessarily large, and where practically the same result can be accomplished, in not doing his work instrumentally, and thus saving a large bill of expense to the persons concerned in the scheme, although had he done his work with instruments he could justify his action under the Act. [*Sutherland v. Romney*, 30 Can. S.C.R. 495, distinguished.] Where the engineer making the report for the municipality is right in the theory upon which he acts, and where the distinction between "injuring liability" and "outlet liability" is so fine as to be almost imperceptible and he assesses for "outlet liability," he will be upheld, although it would have been more scientific if he had assessed for injury liability; the Drainage Referee has the power to change the assessment of the engineer if he thinks proper to do so. [*Orford v. Aldborough*, 7 D.L.R. 217, referred to.]

Tp. of Colchester North v. Tp. of Anderson; *Tp. of Gosfield North v. Tp. of Anderson*, 21 D.L.R. 277.

[Reversed in 24 D.L.R. 143, 34 O.L.R. 437.]

(§ II G 3—240)—DRAINAGE PROCEEDINGS REVIEWED ON APPEAL.

On an appeal under the Municipal Drainage Act (R.S.O. 1914, ch. 198, sec. 67) from the report of an engineer to the Drainage Referee, the Referee has jurisdiction to examine into the cost of the proposed work and the pecuniary advantage to be gained by such work, and where the cost of the work is greatly in excess of the pecuniary advantage to be gained, the Referee should refuse to allow such work to be carried out. [21 D.L.R. 277, 34 O.L.R. 437, reversed.]

Tp. of Colchester North v. Tp. of Anderson; *Tp. of Gosfield North v. Tp. of Anderson*, 24 D.L.R. 143, 34 O.L.R. 437, 9 O.W.N. 59.

**(§ II G 3—241)—RELEASE OF LAKE WATER—
OVERFLOW OF LANDS.**

A municipality is answerable for the damages caused by an overflow of lands, where it permits the accumulation of water in a lake after a heavy rainfall, and later, at the end of the rain, releases the water in large volumes on the lands of riparian owners. (Court divided.) [James v. Town of Bridgewater, 20 D.L.R. 799, affirmed.]

James v. Town of Bridgewater, 24 D.L.R. 634, 49 N.S.R. 188.

GG. COLLECTION OF CLAIMS AGAINST.

(§ II GG—264s)—LIABILITY OF COUNTY OR TOWNSHIP.

Where under secs. 352 and 353, sub-sec. 5, ch. 192, R.S.O. 1914, the Council of a city or town shall establish and maintain a police office, etc., and where by by-law a police office is provided by that Council, a claim for stationery and furniture should be brought against the town and not against the corporation of the county.

Holmested v. Corp. of County Huron, 24 D.L.R. 561.

H. AS TO TAXES.

(§ II H 1—266)—UNDERGROUND VAULTS.

It is within the power of a municipality to impose a land tax upon the space occupied by any underground vault in any street of the city, although such vault has been constructed under the permission of the municipality.

City of Montreal v. Dionne, 24 Que. K.B. 133.

**(§ II H 1—267)—AGREEMENT TO ACCEPT FIXED SUM—RATES SUBSEQUENTLY INCREASED—
VALIDITY.**

A Municipal Council having agreed to accept a certain fixed sum for water rates, and a subsequent by-law having been passed materially increasing the rates imposed and prohibiting the granting of any bonus unless the consent of the ratepayers is obtained (the supplying of water at rates less than those charged to other persons in the municipality being included in the word bonus) it is not illegal where no statutory prohibition exists for the municipality to recognize its moral obligation and adhere to an understanding for a commutation of rates and refrain from collecting the taxes levied over and above the amount agreed on.

Norfolk v. Roberts, 23 D.L.R. 547, 50 Can. S.C.R. 283, affirming 13 D.L.R. 463, 28 O.L.R. 593.

**(§ II H 1—267)—EXEMPTING FROM TAXATION
—RELIGIOUS INSTITUTIONS.**

An arrangement made by a municipality which claims to have a right to tax a certain property belonging to a religious community, which on its side submits that the municipality has no such right, an arrangement by which the latter undertakes to pay annually a fixed sum less than and instead of the usual taxes, is not a donation but

really a contract. Although a municipal corporation cannot under common law agree to such an arrangement, the Legislature has the right to authorize it to make such agreement by a resolution of the Municipal Council. The Municipal Council which has adopted such a resolution, implying, once it has been accepted by the other party, a bilateral contract, cannot rescind it by another resolution.

Maisonnette (Town) v. College Ste. Marie, 24 Que. K.B. 563.

(§ II H 2—275)—ANNEXED TERRITORY.

A municipality cannot validly collect taxes on land of annexed territory not on the assessment roll at the time of annexation, and it may be enjoined from so doing.

Bell v. Town of Burlington, 25 D.L.R. 269, 34 O.L.R. 410, 692, 9 O.W.N. 182, 404.

(§ II H 2—279) — TELEPHONE POLES AND WIRES.

The municipal tax imposed by a village municipality on the telephone poles and wires situate in the streets of the village is illegal and cannot be recovered.

Village of Pierreville v. Bell Telephone Co., 23 D.L.R. 635, 17 Que. P.R. 161.

**I. EXAMINATION OF CORPORATE BOOKS
AND RECORDS.**

(§ II I—280)—RIGHT TO INSPECT RECORDS.

A ratepayer or resident of a municipality has in Ontario no common law right to inspect the record of the municipal corporation; all rights of examination or inquiry by a ratepayer into municipal affairs are limited to those given by statute. [Tenby v. Mason, [1908] 1 Ch. 457, followed; Williams v. Manchester, 13 Times L.R. 299, distinguished.]

Journal Printing Co. v. McVeity, 21 D.L.R. 81, 33 O.L.R. 166, 7 O.W.N. 796.

(§ II I—280)—INVESTIGATION AS TO FORCIBLE INTERFERENCE WITH MUNICIPAL RECORDS—POWERS—CRIMINAL PROCEEDINGS.

The Council of a town has a right, under art. 5320, R.S.Q. 1909, to appoint a committee to inquire into the facts of a violent entrance into the vault containing its archives, its debentures and its money, and to do so upon the proposal of two members of the Council without information by or representation of the ratepayers. The Council can also assign to this committee the right, in case the facts mentioned in the resolution should prove to be true, to institute criminal proceedings against such persons. It is not necessary that the resolution should order the committee to report to the Council.

Labadie v. Town of Levis, 47 Que. S.C. 16.

III. Powers of officers.

(§ III—285)—AUTHORITY OF ENGINEERS SUPERINTENDING PUBLIC WORKS.

Engineers charged with the superinten-

dence of public works are not agents, they are only salaried employees. Therefore they cannot bind the city by ordering, without authority in writing according to law, changes or increases in the works confided to them. This inability results from art. 1689, C.C., and from the provisions of sec. 337 of the Charter of the city.

Harris Construction Co. v. Montreal, 24 Que. K.B. 330.

(§ III—285)—ACCOUNT BY SECRETARY-TREASURER—NON-COMPLIANCE WITH FORMAL REQUIREMENTS—RIGHT OF RATEPAYER TO ATTACK.

The rendering of an account by a municipal secretary-treasurer, without attestation under oath according to the constant usage in the municipality and without the secretary-treasurer being required to comply with this formality, cannot be contested by a ratepayer, (a) because the action pertains only to the municipal corporation, and the plaintiff in his capacity of ratepayer is not competent in law to bring it; (b) because the Municipal Council had accepted this account as rendered and had discharged the secretary-treasurer by repaying to him the balance of the account which was due to him.

Pérodeau v. Richard, 48 Que. S.C. 165.

MURDER.

See Homicide; Criminal Law.

MUTUAL BENEFIT SOCIETIES.

Insurance by, see Insurance.

In general, see Benevolent Societies.

NAME.

Amending indictment as to, see Indictment, etc.

As to trade-marks, see Trade-mark; Trade-name; Copyright.

Name of corporation to bill or note, see Bills and Notes; Cheques.

As goodwill of firm, see Partnership.

NATURALIZATION.

See Aliens.

Annotation.

How affected by war as against rights of alien enemies: 23 D.L.R. 375, 383.

NAVIGABLE WATERS.

See Waters.

NAVIGATION.

Rights of navigation, see Waters; see also Collision; Negligence.

Vessels as common carriers, see Carriers; Shipping.

Procedure in Admiralty cases, see Admiralty.

Salvage of vessels and cargo, see Salvage.

Compensation to seamen, see Seamen.

NECESSARIES.

Husband's liability for, see Husband and Wife.

For infants, see Infants; Parent and Child.

NECESSITY.

Easement by, see Easements.

NEGLIGENCE.

I. AS BASIS OF ACTION.

- A. General rules.
- B. Dangerous agencies.
- C. Dangerous premises.
- D. On highways or waters.

II. CONTRIBUTORY.

- A. Generally.
- B. Of persons under disability.
- C. On highways.
- D. Other cases.
- E. Imputed.
- F. Injury avoidable notwithstanding contributory negligence; last clear chance.

Review of verdict or finding as to, see Appeal.

In operation of automobiles, see Automobiles.

Of bailee, see Bailment.

As to buildings, see Buildings.

Of carrier, see Carriers.

Matters peculiar to actions for death, see Death.

In respect to highways, see Highways.

Of master or servant, independent contractor, see Master and Servant.

As element of nuisance, see Nuisances.

Of physicians, see Physicians and Surgeons. See also Hospitals.

Pleading as to, see Pleading.

As to proximate cause, see Proximate Cause.

In railway operations, see Railways.

In matters relating to shipping, see Shipping; Admiralty.

Of street railways, see Street Railways.

Of telegraph company, see Telegraphs.

As question for jury, see Trial.

Of warehousemen, see Warehousemen.

In waters, see Waters.

In lumbering operations, see Logs and Logging.

Liability of municipality for, see Municipal Corporations.

Annotations.

Contributory negligence of children injured on highways through negligent driving: 9 D.L.R. 522.

Contributory; negligence; navigation; collision of vessels: 11 D.L.R. 95.

Defective premises; liability of owner or occupant; invitee, licensee or trespasser: 6 D.L.R. 76.

Duty to licensees and trespassers; obligation of owner or occupier: 1 D.L.R. 240.

I. As basis of action.

A. GENERAL RULES.

(§ I A—1)—CAUSING DEATH—RIGHT OF ACTION.

A legal right of action for negligence

causing death under art. 1056, C.C., is not taken away from an ascendant of whom the deceased was not the "only support" in the terms of articles 3 and 15 of the Workmen's Compensation Act, Que., 9 Edw. VII., ch. 66, R.S.Q., 1909, arts. 7323 and 7335; such ascendant if only partially dependent upon the deceased may still maintain an action under art. 1056, C.C. [Lamontagne v. Quebec R., L., H. & P. Co., 23 Que. K.B. 212, reversed.]

Lamontagne v. Quebec R., L., H. & P. Co., 22 D.L.R. 222, 50 Can. S.C.R. 423.

(§ I A-1)—PRESUMPTION AS TO WORK AUTHORIZED BY PARLIAMENT.

The caretaker of an inanimate thing is liable for the damages caused by it. There is a presumption of negligence against him, but this presumption can be rebutted by evidence against it. This evidence comprises not only that of force majeure and of the want of care of the injured party, but all evidence shewing that there was no negligence on the part of the person who had the care of this thing. But it is necessary to allege this negligence although the law does not require the proof, for in our law, as a general rule, negligence is the base of all liability. There is an exception in the case where Parliament has authorized a person to do an act or carry on an industry. In this case, according to the decision of the Privy Council in the case of Roy v. C.P.R. Co., [1902] A.C. 220, it is necessary to allege and prove negligence on his part to make him liable. When the accident occurs through an act of omission, it is necessary to establish that the precaution omitted might have prevented the accident, and that its omission is, therefore, the real cause of the accident.

Quebec R., L., H. & P. Co. v. Vandry, 24 Que. K.B. 214.

[Reversed by Can. Sup. Ct., March 3, 1916.]

(§ I A-4a)—DEFECTIVE CODE OF MINE SIGNALS AS NEGLIGENCE.

Where a statutory code of mine signals is compulsorily adopted, a defect incident to such code cannot be made the basis of a negligence action on the theory that the statutory signalling system should have been supplemented by another such as a speaking tube system.

Ganzini v. Jewel-Denero Mines, 21 D.L.R. 406, 21 B.C.R. 317.

B. DANGEROUS AGENCIES.

(§ I B 1-5)—PRESUMPTION AS TO NEGLIGENCE.

There is no presumption of negligence against an industrial company of not using a mode of preventing accidents which has not yet been proved to be of sufficient capacity and which can in certain cases even increase the danger.

Quebec R., L. H. & P. Co. v. Vandry, 24 Que. K.B. 214.

[Reversed by Can. Sup. Ct., March 3, 1916.]

(§ I B 2-15)—INJURY TO PERSON BY BREAKING OF BENCH IN PUBLIC PARK—DUTY OF OWNER OF BENCH TO PUBLIC RESORTING TO PARK—EVIDENCE—CONDITION OF BENCH—REASONABLE USER.

McPhee v. Toronto and Bulmer, 9 O.W.N. 150.

(§ I B 2-23)—STEAM WAGGON—FRIGHTENING HORSES.

The operating of moving machinery, such as steam waggons or steam rollers, emitting smoke and cinders on a street in close proximity to horses standing thereon and liable to frighten them, without precautions or warnings of their approach, is actionable negligence. [Kirk v. Toronto, 8 O.L.R. 730, followed; Jones v. Liverpool, 14 Q.B.D. 890, distinguished.]

Mack v. Lake Winnipeg Shipping Co., 24 D.L.R. 128, 25 Man. L.R. 364, 8 W.W.R. 523.

C. DANGEROUS PREMISES.

(§ I C 1-35)—COLLAPSE OF STAIRWAY—INJURY TO EMPLOYEE OF SUB-CONTRACTOR—LIABILITY OF CONTRACTOR.

Building contractors who allow a temporary stairway to be used by persons working in the building under construction are properly held liable in negligence for personal injuries sustained by an employee of their sub-contractor by the collapse of such stairway when he attempted to pass over it, if no warning had been given or barrier placed to give notice that the stairway was being moved to a different position by the contractor's workmen; the fact that the contractor's workmen had permitted another person to use the stairs just prior to the plaintiff's arrival was sufficient to put the plaintiff off his guard on seeing this and to justify him in assuming that the use of the stairway was permitted as being safe without putting upon the plaintiff the duty of investigating what was being done by the contractor's workmen then and there engaged at work. [Klukas v. Thompson Co., 21 D.L.R. 312, reversed.]

Klukas v. Thompson & Co., 24 D.L.R. 67, 8 W.W.R. 778, 31 W.L.R. 438.

(§ I C 1-35)—INJURY TO SHOPPER FALLING THROUGH TRAP DOOR—COMMON FAULT.

There is common fault when a woman, being in a shop, falls through an open trap door in a corner and inflicts upon herself serious injuries. The fault of the plaintiff consists in not looking where she was going; that of the defendant in the fact that he should not have left the cellar door open in a part of his shop to which the public had access.

Vézina v. Laperle, 48 Que. S.C. 174.

(§ I C 1-35)—EXPLOSION OF NATURAL GAS IN CELLAR OF DWELLING HOUSE—ESCAPE FROM UNDERGROUND PIPES OF GAS COM-

PANY—BREAK IN PIPE—CAUSE OF—FINDINGS OF JURY—LIABILITY OF COMPANY.
Stables v. United Gas and Fuel Co., 8 O.W.N. 105.

(§ I C 1—35)—INJURY TO ROAD ENGINE—DEFECTIVE CONDITION OF PRIVATE ROAD—FINDINGS OF JURY—NEW TRIAL DIRECTED BECAUSE NEGLIGENCE FOUND NOT CONNECTED WITH INJURY—CONNECTION FOUND BY JURY AT NEW TRIAL—QUESTION OF NEGLIGENCE RAISED ON APPEAL—RES ADJUDICATA—EVIDENCE.

Everton v. Kilgour, 8 O.W.N. 365.

(§ I C 1—38)—FALL OF WALL—RES IPSA LOQUITUR.

The unexplained fall of a wall is prima facie evidence of negligence on the part of those responsible for its construction. Ordinary care is not determined by the wisdom gained by results; it is gauged by the situation and surrounding circumstances. In general it means such care as prudent and cautious men would use according to the exigency and as would be necessary to guard against probable danger.

Erdman v. Consolidated Mining & Smelting Co., 7 W.W.R. 1121.

(§ I C 1—44)—EXCAVATIONS—DUTY AS TO CARE—INDEPENDENT CONTRACTOR.

A man who orders a work to be executed from which, in the natural course of things, injurious consequences to his neighbour must be expected to arise unless means are adopted by which such consequences may be prevented, is bound to see to the doing of that which is necessary to prevent the mischief, and cannot relieve himself of his responsibility by employing someone else, whether it be the contractor employed to do the work from which the damage arises or some independent person, to do what is necessary to prevent the act he has ordered to be done from becoming wrongful. [*Bower v. Peate*, 1 Q.B.D. 321, followed.]

Bertram v. Builders' Assoc. of North Winnipeg, 23 D.L.R. 534, 8 W.W.R. 814, 31 W.L.R. 430.

(§ I C 2—50)—DUTY TO INVITEE—VOLUNTARY ASSUMPTION OF RISK.

The owner or occupant of premises owes to an invitee a duty not to expose him to any unexpected danger without warning him of it; but where the danger is patent to everyone and the invitee knows of it he must be taken to have voluntarily assumed the risk. [*Lucy v. Bawden*, [1914] 2 K.B. 318, followed.]

Keech v. Sandwich, Windsor & Amherstburg R. Co., 22 D.L.R. 784, 8 O.W.N. 96.

(§ I C 2—50)—LOGGING OPERATIONS—INJURIES TO TRESPASSERS.

There is no liability on the part of a company conducting logging operations for injuries to a trespasser thereby occasioned. [*Lowery v. Walker*, [1910] 1 K.B. 173, [1911] A.C. 10, followed.]

Gilbert v. Southgate Logging Co., 24 D.L.R. 202, 8 W.W.R. 1304, 32 W.L.R. 131.

(§ I C 2—55)—INJURIES TO CHILDREN—DANGEROUS ATTRACTIONS—BUILDING MATERIALS ON SCHOOL PREMISES.

Where material not dangerous in itself is left in a safe but inconvenient position by a contractor on school premises where he was employed to do certain repairs, he will not be liable for damage which resulted to one of the scholars from its being moved by third parties to a dangerous position, which change the contractor could not have reasonably anticipated. [*Makins v. Piggott*, 29 Can. S.C.R. 188, distinguished; *Jackson v. London County Council*, 28 Times L.R. 359, referred to.]

Vick v. Morin & Thompson, 22 D.L.R. 29, 21 B.C.R. 8, 7 W.W.R. 1053, 30 W.L.R. 412.

D. ON HIGHWAYS OR WATERS.

(§ I D—70)—NEGLIGENT DRIVING—LIABILITY OF LIVERY STABLE KEEPER.

A livery stable keeper who engages to convey a passenger and supplies the driver as well as the horse and buggy will be liable in damages for the driver's failure to do what a reasonable and prudent driver would have done on approaching a traction engine on the road with knowledge that there was a strong probability of the horse becoming scared and with knowledge that the road at that point was a dangerous one on which to pass the engine, notwithstanding which the driver attempted to pass, with the result that the buggy was overturned and the passenger injured.

Golightly v. Banning, 22 D.L.R. 124.

[See also *Balfour v. Bell Telephone Co.*, 24 D.L.R. 395; 34 O.L.R. 149; *Gray v. Steeves*, 42 N.B.R. 676.]

(§ I D—70)—NEGLIGENT DRIVING KILLING HIGHWAY WORKMAN—SUFFICIENCY OF EVIDENCE.

Deceased, an employee of the Corporation of Vancouver, was run down and killed by a motor car while working on a bridge clearing snow shortly after midnight. On the question of the identity of the motor car that struck deceased there was the evidence of the driver of a sleigh who was close by, and saw the accident, he swearing that from the time he came on the south end of the bridge and reached the scene of the accident, the only car to pass him (which was going south as he was) was the car that struck deceased, and the defendant admitted that, after coming on to the south end of the bridge and before he reached the spot where the accident occurred, he passed a sleigh. The evidence was corroborated by one of the deceased's fellow workmen, who swore that the only motor car that passed between three minutes to twelve and the time of the accident was the car that killed deceased. The jury found in favour of the plaintiffs. Held, on appeal, that there was evidence upon which the jury might reasonably return the verdict which they did. Per *Gallagher, J.A.*: "Where there are probabilities that might be

weighed by a jury, it is proper that such a case should go to the jury." [Grand Trunk Pac. R. Co. v. Griffiths, 45 Can. S.C.R. 380, followed.]

Longman v. Cottingham, 18 B.C.R. 184. [Appeal to the Supreme Court of Canada dismissed, 15 D.L.R. 296.]

(§ I D—70)—"SAFETY ISLAND"—VEHICLES.

Where a person crossing a highway, having a double track of rails in the centre, there being a fifteen-foot fairway between the curb of the street and the outer rail on each side, within which vehicular traffic is supposed to keep, reaches the first track he may reasonably feel the security afforded by a "safety island," and if he is struck by the midguard or some similarly projecting part of a rubber-tired motor "bus" which approaches him, having its right wheels on the inside rails, and so injured, he may recover in an action for negligence.

Jeffares v. Wolfenden, 31 W.L.R. 428.

(§ I D—71)—TUG AND TOW—NEGLIGENCE IN NAVIGATION—CONTRIBUTORY NEGLIGENCE—APPORTIONMENT OF DAMAGES.

It is negligence on the part of a tug towing for hire a raft of logs to fail to navigate so as to prevent the logs from drifting against a shoal; and it is contributory negligence from those having charge of the raft to neglect to have the rear end of the tow lighted, and to withdraw to the front of it and leave the rear end uncared for. The damages were equally divided.

Kearney v. Dansereau, 24 Que. K.B. 401.

(§ I D—71)—COLLISION OF VEHICLES ON HIGHWAY—INJURY TO TRAVELLER IN HIRED VEHICLE DRIVEN BY SERVANT OF OWNER—LIABILITY—CAUSE OF COLLISION—RULE OF ROAD—HIGHWAY TRAVEL ACT, R.S.O. 1914, CH. 206, SECS. 3 (1), 5 (1)—REASONABLE CARE.

Bloch v. Moyer, 7 O.W.N. 389, 830.

II. Contributory.

A. GENERALLY.

(§ II A—75)—VOLENS.

If a person with full knowledge and appreciation of the risk and danger attending a certain act, voluntarily does that act, it will be assumed that he voluntarily incurred the attendant risk and danger, and the maxim *volenti non fit injuria* directly applies. [23 Que. K.B. 203, reversed.]

Canadian Pacific R. Co. v. Frechette, 22 D.L.R. 356, [1915] A.C. 871, 113 L.T. 1116, 31 W.L.R. 872, 18 Can. Ry. Cas. 251.

(§ II A—81)—REFUSING MEDICAL TREATMENT.

The author of a *délit* or a quasi *délit* is only answerable for the damages which are the immediate and necessary result of it. Thus, where the victim of an accident aggravates the consequences of it by refusing treatment which should cure it, he cannot hold the author of the accident liable for a permanent infirmity which might have been avoided.

Noel v. Quebec R., L. H. & P. Co., 48 Que. S.C. 130.

B. OF PERSONS UNDER DISABILITY.

(§ II B—88)—CHILDREN.

The doctrine of contributory negligence does not apply to an infant of tender years. [Gardner v. Grace, 1 F. & F. 359; Clark v. Chambers, 3 Q.B.D. 327, 338, referred to.]

Vick v. Morin & Thompson, 22 D.L.R. 29, 21 B.C.R. 8, 7 W.W.R. 1053, 30 W.L.R. 412.

C. ON HIGHWAYS.

(§ II C—95)—DEVIATION FROM REGULAR ROUTE TO AVOID DANGER.

One who to avoid a danger deviates from his route and puts himself in a more dangerous position cannot be accused of fault, even if he commits an error in judgment, if he merely acts on a sudden impulse created by the imminence of the danger.

Town of Coaticook v. Laroche, 24 Que. K.B. 339.

F. INJURY AVOIDABLE NOTWITHSTANDING CONTRIBUTORY NEGLIGENCE; LAST CLEAR CHANCE.

(§ II F—120)—ULTIMATE NEGLIGENCE.

Negligence of a defendant incapacitating him from taking due care to avoid the consequences of the plaintiff's negligence may, though anterior in point of time to the plaintiff's negligence, constitute ultimate negligence, rendering the defendant liable, notwithstanding the contributory negligence of the plaintiff. [Brenner v. Toronto R. Co., 13 O.L.R. 423, reversed in 15 O.L.R. 195, 40 Can. S.C.R. 540, referred to; Scott v. Dublin & Wicklow R. Co., 11 Ir. C.L.R. 377, 394, followed; Loach v. B.C. Electric R. Co., 16 D.L.R. 245, 19 B.C.R. 177, affirmed.]

B.C. Electric R. Co. v. Loach, 23 D.L.R. 4, 32 W.L.R. 169, 113 L.T. 946.

(§ II F—120)—ULTIMATE NEGLIGENCE—FINDINGS OF JURY.

Stepan v. National Elevator Co., 22 D.L.R. 914.

NEGOTIABLE INSTRUMENTS.

See Bills and Notes; Cheques; Banks.

NERVOUS SHOCK.

As element of damage, see Damages.

NEWSPAPER.

Libel by, see Libel and Slander.

NEW TRIAL.

I. IN GENERAL; AS MATTER OF RIGHT.

II. FOR ERRORS OF THE COURT.

III. FOR MATTERS PERTAINING TO JURY OR VERDICT.

A. In general.

B. Erroneous verdict.

C. Selection and qualification of, or influence upon, jurors.

D. Misconduct or separation of jurors; compromise verdict.

IV. NEW EVIDENCE; SURPRISE.

V. PRACTICE.

- A. In general; time.
- B. Motions; statement.
- C. Evidence; affidavits generally.
- D. Testimony or affidavits of jurors.
- E. Remittitur.
- F. Granting new trial of some issues.

Awarding new trial on appeal, see Appeal.
Trial de novo in bastardy proceedings, see Bastardy.

Annotation.

Judge's charge; instruction to jury in criminal case; misdirection as a "substantial wrong"; Cr. Code (Can.), 1906, s. 1019: 1 D.L.R. 103.

I. In general; as matter of right.

(§ I—1)—ACTION FOR NEGLIGENCE — INSUFFICIENT EVIDENCE.

Where the evidence of negligence is not convincing and so intimidated by the trial Judge, or where the jury's findings inferentially negative the existence of negligence, the Court will not grant a new trial. [Cobban v. C.P.R. Co., 23 A.R. (Ont.) 115; G.T.R. Co. v. McKay, 34 Can. S.C.R. 81, 85; Andreas v. C.P.R. Co., 7 Terr. L.R. 327, 37 Can. S.C.R. 1, applied.]

Schell v. City of Regina, 24 D.L.R. 755, 8 S.L.R. 275, 31 W.L.R. 834.

(§ I—2)—UNFAIR REMARK OF COUNSEL.

Unfair and inflammatory language employed by counsel in the present action of a case for the plaintiff in an action against a street railway for injuries to a woman passenger, unless objected to by counsel or stopped by the trial Judge, is not of itself ground for a new trial. [Sornberger v. C.P.R. Co., 24 A.R. (Ont.) 263, referred to.]

Dale v. Toronto R. Co., 24 D.L.R. 413, 34 O.L.R. 104, 8 O.W.N. 443.

II. For errors of the Court.

(§ II—7)—IMPROPER ADMISSION OF EVIDENCE — PREVENTING PROOF OF DEFENCE.

A defendant is entitled to a new trial on the ground that he was prevented from attempting to prove his defence on cross-examination of the plaintiff's witnesses; and on the ground of the improper reception of evidence of correspondence and conversations after the trusteeship had ceased. [Atkinson v. Smith, 9 N.B.R. 309, discussed and not followed.]

Jones v. Burgess, 43 N.B.R. 126.

[Appeal allowed in part by Canada Supreme Court, March 3, 1916.]

(§ II—7)—STATEMENT OF WITNESS IN FORMER TRIAL READ IN CHARGE TO JURY.

Only a very clear case of wrong or miscarriage would justify an order for a third trial, where the amount involved is small in proportion to the costs incurred. (Per Anglin, J.) Where a trial Judge, in the course of his charge, gives to the jury a statement from his own notes of a former

trial of the evidence given by a witness, and a protest from counsel is dealt in a way calculated to impress upon the jury still more emphatically an alleged incompatibility between the evidence of the witness and the statement supposed to have been made formerly by him, a new trial should be directed. (Per Duff, J.)

Hearn v. Nelson, 8 W.W.R. 99.

(§ II—8)—WHEN REFUSED—FAILURE TO OBJECT.

No new trial will be granted if no objections are taken to the non-direction of the Judge or to the forms of questions asked, or that further or other questions should be submitted. [Nevill v. Fine Arts, Etc., Co., [1897] A.C. 68, 75, followed; Oliver v. Winnipeg, 16 D.L.R. 340, 24 Man. L.R. 25, applied.]

Hile v. G.T.P. R. Co., 24 D.L.R. 9, 8 W.W.R. 403.

(§ II—8)—WHEN REFUSED—FAILURE TO BRING TO COURT'S ATTENTION.

A new trial will not be granted on the ground of non-direction where counsel was afforded an opportunity at the trial to call the Judge's attention to a more specific direction and failed to do so.

Phillips v. Montgomery, 25 D.L.R. 499, 43 N.B.R. 229.

(§ II—8)—WHEN REFUSED—MISDIRECTION.

The Court is not warranted under O. XXXIX, r. 6, in granting a new trial on the ground of misdirection in a case where, if the verdict had been for the opposite party on a proper direction, it would be set aside.

Simpson v. Malcolm, 43 N.B.R. 79.

(§ II—9)—WHEN REFUSED—ISSUES FAIRLY SUBMITTED.

A new trial will not be granted on the ground of misdirection if the charge, taken as a whole, fully and fairly leaves the facts to the jury, notwithstanding it contains objectionable isolated expressions or statements, nor on the ground that the trial Judge failed to refer particularly to material evidence if counsel fails to call attention to the omission.

Porter v. O'Connell, 43 N.B.R. 458.

(§ II—9a)—IMPROPER ADMISSION OF EVIDENCE—LETTERS—PROOF OF SIGNATURE.

Proof that a letter produced by a witness was written by the defendant company involves two elements, viz., the signature of the person who signed and his authority, and, where objection was taken to the letter being given in evidence for failure to adduce such proof, a new trial may be ordered where the letter was admitted, and the question of its proof was, in effect, withdrawn from the jury, whose verdict depended on the effect to be given to such letter.

Cochlin v. Massey-Harris Co., 23 D.L.R. 397, 8 A.L.R. 392, 8 W.W.R. 286, 30 W.L.R. 922.

(§ II—9a)—IMPROPER ADMISSION OF EVIDENCE—EXTRACT OF MINING REPORTS.

It is a ground for a new trial in an action for injury at a mine through alleged breach of statutory rules, that the trial Judge gave credence to extracts from the mining company's report to the government, although the report itself was not put in evidence, the plaintiff not wishing to be bound by all of the statements made therein, and the defendant company objecting that the entire report must go in or none of it.

Stanoszek v. Canadian Collieries, 22 D.L.R. 691.

III. For matters pertaining to jury or verdict.

B. ERRONEOUS VERDICT.

(§ III B—15) — VAGUE FINDINGS — PROXIMATE CAUSE.

A general affirmative finding by a jury on a question as to whether the unsafe condition of an elevator was the cause or one of the causes of an accident, without specifying the particular cause, is too vague on which to enter up judgment and ground for a new trial. [See 18 D.L.R. 786.]

Pescovitch v. Western Canada Flour Mills, 23 D.L.R. 310, 25 Man. L.R. 575, 8 W.W.R. 1146, 31 W.L.R. 921.

(§ III B—15)—ACTION BY HUSBAND AND WIFE — INDEFINITENESS AS TO PLAINTIFFS.

The verdict in a negligence action must be certain in that it must shew in whose favour it was given where two plaintiffs, husband and wife, sue for separate causes of action, one by the wife and one by the husband; a new trial must be ordered if the verdict is brought in "for the plaintiff" in a fixed sum of damages where there is nothing to shew for which plaintiff the verdict was given in an action by the wife for damages for her injuries in falling from a street car, and an action by the husband for medical expenses and the loss of his wife's society and services.

Earley v. Winnipeg Electric R. Co., 22 D.L.R. 765, 25 Man. L.R. 443, 31 W.L.R. 365, 8 W.W.R. 850.

(§ III B—15)—FINDINGS AGAINST WEIGHT OF EVIDENCE—DOCUMENTARY EVIDENCE.

It is a ground for ordering a new trial that on one essential portion of the case the successful party in the Court below is found by the Appellate Court to be contradicted by the overwhelming mass of testimony, particularly where the documentary evidence supports such contradiction.

McDonald v. Campbell, 22 D.L.R. 748, 48 N.S.R. 520.

(§ III B—16)—VERDICT AGAINST WEIGHT OF EVIDENCE.

A new trial may be directed where a jury gives a verdict which is against the weight of evidence and such that the jury reviewing the whole of the evidence reasonably could not properly find. Where a jury is not able to answer the questions submitted to them

by a unanimous decision and so state, but nevertheless undertake coincidentally with such statement to render a general verdict in favour of plaintiff, this verdict cannot be supported. (Per McPhillips, J.A., dissenting.)

Mackenzie v. B.C. Electric R. Co., 8 W.W.R. 956.

(§ III B—16)—INDEFINITE FINDINGS AS TO NEGLIGENCE AND CONTRIBUTORY NEGLIGENCE.

An action for damages occasioned by an explosion in the course of mining operations was dismissed upon a finding of the jury of contributory negligence. Upon appeal to the Court of Appeal for British Columbia, it was held, that there was no evidence to sustain this finding; but, because of uncertainty as to which of two distinct grounds of negligence charged had been found against the defendants, a new trial was directed. The defendants then appealed to the Supreme Court of Canada, contending that there was no evidence of negligence on their part on either charge, and that there was evidence to support the finding of negligence on the part of the plaintiff. Held, that the finding of negligence and also that of contributory negligence were indefinite, and that there ought to be a new trial. (Per curiam, Davies and Duff, JJ., dissentientibus.)

Lilja v. Granby, 9 W.W.R. 662.

D. MISCONDUCT OR SEPARATION OF JURORS; COMPROMISE VERDICT.

(§ III D—26) — JUROR VISITING SCENE OF ACCIDENT.

Visiting the scene of the accident by a juror, during the course of trial, which does not influence nor bias his verdict is no ground for a new trial.

Atkinson v. C.P.R. Co., 25 D.L.R. 48, 8 S.L.R. 440, 9 W.W.R. 600, 33 W.L.R. 49.

(§ III D—26) — DEFECTIVE PANEL — MISCONDUCT—RÉQUÊTE CIVILE.

In a trial by jury the irregularity in the panel cannot be objected to after the verdict and cannot form a ground for a *réquete civile* when it is not proved that the party complaining has suffered prejudice. No more can a new trial be abandoned by *réquete civile* for an act of misconduct on the part of a juror, nor for want of notice of action as the law requires. [Appealed to the Privy Council.]

Normandin v. Montreal Tramways Co., 48 Que. S.C. 21.

IV. New evidence; surprise.

(§ IV—31)—WHEN REFUSED ON NEWLY DISCOVERED EVIDENCE.

The Court will not grant a new trial on newly discovered evidence when such evidence is simply additional and cumulative to evidence already given.

Hanson v. Ross, 42 N.B.R. 650.

(§ IV—31) — WHEN GRANTED — EVIDENCE OF PROBABLE CAUSE—AMENDMENT—COSTS.
Cromwell v. Rioux, 9 O.W.N. 210.

V. Practice.

B. MOTIONS; STATEMENT.

(§ V B—40) — DIVISION COURTS — TRIAL OF PLAINT WITH JURY—MOTION FOR NONSUIT — POWER OF JUDGE TO ORDER NEW TRIAL WITHOUT APPLICATION THEREFOR — MANDAMUS.

Re Barr Registers v. Neal, 7 O.W.N. 726.

C. EVIDENCE; AFFIDAVITS GENERALLY.

(§ V C—45)—AFFIDAVIT OF WITNESS — MIS-TAKING TESTIMONY.

A new trial will not be granted on the affidavit of a witness merely that he made a mistake in his evidence on a material point and would correct it on another trial.

Hanson v. Ross, 42 N.B.R. 650.

D. TESTIMONY OR AFFIDAVITS OF JURORS.

(§ V D—50)—INTERFERENCE WITH JURY.

On a motion for a new trial in an action of trespass involving the location of a line, the Court will hear affidavits of jurors in answer to affidavits stating that one of the parties interfered with the jury while viewing the locus in quo.

Hanson v. Ross, 42 N.B.R. 650.

NOMINATION.

To office, see Elections.

NON-RESIDENT.

Jurisdiction over, see Courts; Aliens.

Security for costs, see Costs.

Service on generally, see Writ and Process.

Attachment against, see Attachment.

Foreign corporations, see Corporations and Companies.

Testimony of non-residents, see Depositions; Discovery and Inspection.

NON-SUPPORT.

Of wife, see Husband and Wife.

Alimony actions, see Divorce and Separation, V.

Of children, see Parent and Child; Infants.

NOTES.

See Bills and Notes.

NOTICE.

Of appeal, see Appeal.

Of non-payment of note, as affecting holder in due course, see Bills and Notes.

Of personal injuries or damage to property, see Carriers; Railways; Municipal Corporations; Highways.

Of fraud in conveyance, see Fraudulent Conveyances.

Record as, see Records and Registry Laws; Land Titles.

Upon assignment, see Assignment.

As to bona fide purchaser of land, see Vendor and Purchaser, III.

NOVATION.

See Contracts.

NUISANCES.

I. WHAT ARE.

II. REMEDIES.

A. In general; who may have.

B. Who liable.

C. Abatement.

D. Defences.

III. CRIMINAL LIABILITY.

Power of municipality as to, see Municipal Corporations, II.

Damages caused by, industrial works, see Damages, III K.

I. What are.

(§ I—1) — BLACKSMITH SHOP — INJURY TO NEIGHBOUR'S PROPERTY—LOCAL STANDARD OF NEIGHBOURHOOD — EVIDENCE — INJUNCTION — DAMAGES — COUNTERCLAIM—"BOYCOTTING."

Beamish v. Glenn, 9 O.W.N. 199.

(§ I—6) — NOISE AND NOXIOUS VAPOURS — DAMAGES — INJUNCTION — REFERENCE — COSTS.

Lauzon v. Dominion Stamping Co., 8 O.W.N. 329.

II. Remedies.

A. IN GENERAL; WHO MAY HAVE.

(§ II A—30) — PECULIAR DAMAGE — ABATEMENT SINCE TRIAL OF ACTION—DAMAGES—COSTS.

Reynolds v. City of Windsor, 9 O.W.N. 6.

(§ II A—31) — OBSTRUCTION OF STREET — PECULIAR DAMAGE TO OCCUPANT OF SHOP — LOSS OF BUSINESS — ASSESSMENT OF DAMAGES.

Lord v. Sandwich, Windsor and Amherstburg R. Co., 8 O.W.N. 194.

B. WHO LIABLE.

(§ II B—35)—DUMPING REFUSE NEAR VACANT LAND IN CITY—LIABILITY OF CITY CORPORATION—OPPORTUNITY TO ABATE NUISANCE — DELAY OF JUDGMENT.

Reynolds v. City of Windsor, 8 O.W.N. 234.

C. ABATEMENT.

(§ II C—40)—JUDGMENT FOR ABATEMENT.

Judgment for the abatement of it, on a conviction for a public nuisance, cannot be given unless the nuisance continues at the time of the indictment.

Rex v. Toronto R. Co., 25 D.L.R. 586, 34 O.L.R. 589, 9 O.W.N. 152.

(§ II C—40)—CRIMINAL OR COMMON — MODE OF ABATEMENT.

The intention of sec. 223 of the Criminal Code is to leave intact the common law right to proceed by indictment or information for a public nuisance not only for acts involving the public safety or health, or occasioning injury to the person of an individual, known as criminal nuisances under sec. 222, but also that which merely endangers the property or comfort of the public as provided by sec. 221, except that the former is made a crime punishable by fine and imprisonment, while the latter, although still a crime, is restricted to the remedy of abatement if the nuisance continues to exist.

Rex v. Toronto R. Co., 25 D.L.R. 586, 34 O.L.R. 589, 9 O.W.N. 152.

(§ II C—41)—MINING TAILINGS — ABATEMENT—NOTICE.

The washing down of tailings of mining property on another's lands constitutes a nuisance by commission and also of emergency, which justifies the aggrieved party to trespass upon the wrongdoer's land, without any previous notice or request, for the purpose of abating it. [Lemmon v. Webb, [1895] A.C. 1, 64 L.J. Ch. 205; Raikes v. Townsend, 2 Smith 9, followed; McCurdy v. Norrie, 6 D.L.R. 134, applied.]

Suttles v. Cantin, 24 D.L.R. 1, 8 W.W.R. 1293, 32 W.L.R. 101.

III. Criminal liability.

(§ III—55) — OVERCROWDED STREET CARS — INADEQUATE CAR EQUIPMENT — INDICTABLE OFFENCE.

A nuisance maintained by a company which operates a street railway on city streets by the systematic and continued overcrowding of cars through failure to put on a proper equipment is none the less a public or common nuisance and indictable as such, although only a portion of the general public who used the cars had their comfort or property endangered by the overcrowding. [R. v. Toronto R. Co. (No. 1), 18 Can. Cr. Cas. 417, 23 O.L.R. 186, affirmed on appeal; Macdonald v. Hamilton, etc., Road Co., 3 U.C.C.P. 402, referred to.]

Rex v. Toronto R. Co., 25 D.L.R. 586, 34 O.L.R. 589, 9 O.W.N. 152.

(§ III—56) — ENDANGERING PUBLIC COMFORT —INDICTMENT.

The intention of sec. 223 of the Cr. Code, 1906 (Cr. Code, 1892, sec. 193), which was taken from sec. 152 of the English draft Criminal Code, is to leave untouched the common law right to proceed by indictment or information as a remedy for a public nuisance not involving public safety or public health or occasioning injury to the person of an individual (Cr. Code, sec. 222), but which merely endangers the property or comfort of the public (Cr. Code 221); the latter remains a crime, but the remedy is now restricted by Cr. Code sec. 223 to that of abatement.

Rex v. Toronto R. Co., 25 D.L.R. 586, 34 O.L.R. 589, 9 O.W.N. 152.

OATHS.

See also Affidavits.

As qualification of office, see Officers; Elections.

(§ I A—2)—FORM OF SWEARING HINDOO — INTERPRETER.

Where a Hindoo witness in a criminal case is sworn through an interpreter by solemnly promising with uplifted hand to tell the truth, the whole truth, and nothing but the truth, and he assents to such ceremony as the appropriate and usual one in swearing men of his nationality and class with intent that his evidence should be received and acted upon as evidence given under oath, and thereupon answers affirmatively an interrogation whether the "oath" he had taken was binding upon his conscience, he must be taken to have invoked his deity by such ceremony even though it does not appear that express words of invocation were uttered in connection with his solemn promise to tell the truth, and such witness is properly convicted of perjury if his testimony proves false. [R. v. Shajoo Ram, 23 Can. Cr. Cas. 334, 19 D.L.R. 313, affirmed; R. v. Lai Ping, 8 Can. Cr. Cas. 467, 11 B.C.R. 102; and Curry v. The King, 22 Can. Cr. Cas. 191, 48 Can. S.C.R. 532, 15 D.L.R. 347, referred to.]

Shajoo Ram v. The King (No. 2), 26 D.L.R. 267, 25 Can. Cr. Cas. 69, 51 Can. S.C.R. 392, 8 W.W.R. 613.

OBJECTIONS.

To raising questions on appeal, see Appeal. In general, see Trial; New Trial.

OBSTRUCTING JUSTICE.

(§ I—10)—OBSTRUCTING OFFICER—MODE OF TRIAL—SUMMARY CONVICTION OR SUMMARY TRIAL.

Obstructing a peace officer is an offence under Cr. Code, sec. 169, which may be prosecuted either under the Summary Convictions Clauses (Pt. XV. of the Code), with a limit of six months' imprisonment or \$100 fine, or as an offence punishable on indictment at the option of the Crown; a police magistrate, who would have jurisdiction to summarily try the indictable offence under Part XVI. of the Code secs. 773, 781, with the consent of the accused, may nevertheless try the case without his consent where the proceedings are taken under Part XV. as for an offence punishable on summary conviction, but subject to the limit of punishment under that mode of procedure instead of that provided by Part XVI. [R. v. Nelson, 4 Can. Cr. Cas. 461, approved; and see R. v. Jack, 5 Can. Cr. Cas. 304; R. v. Crossen, 3 Can. Cr. Cas. 152; and R. v. Carmichael, 7 Can. Cr. Cas. 167, not followed.]

Rex v. West, 24 Can. Cr. Cas. 249, 34 O.L.R. 368, 9 O.W.N. 9.

OFFERS.

As to offers and their acceptance, see Contracts.

OFFICERS.**I. SELECTION; INCUMBENCY; REMOVAL.**

- A. In general; eligibility.
- B. Appointment and election.
- C. Qualifying; induction; vacancy.
- D. Term; holding over.
- E. Resignation or deprivation of office.
- F. Contest of title.

II. RIGHTS; POWERS; DUTIES; LIABILITIES.

- A. In general.
- B. Compensation and fees.
- C. Liabilities.

III. OFFICERS DE FACTO.

Arrest by, see Arrest.

As to bonds of, see Bonds, II.

Of corporation, see Corporations and Companies.

Embezzlement by, see Theft.

Liability for false imprisonment, see False Imprisonment.

Mandamus to, see Mandamus.

Municipal liability for acts of, see Municipal Corporations, II.

As to levy under execution, rights and liabilities therefrom, see Execution; Levy and Seizure.

As to solicitors, see Solicitors.

I. Selection; incumbency; removal.**A. IN GENERAL; ELIGIBILITY.****(§ I A 2—10) — MUNICIPAL CANDIDATES—PROPERTY QUALIFICATION.**

The value of the property qualification of a candidate for municipal councillor required by sec. 52 of the Municipal Act (Man.) was held by a divided Court to mean the actual, not the assessed value at the time of the election.

Spencer v. Farthing, 23 D.L.R. 620, 25 Man. L.R. 564, 8 W.W.R. 1186, 31 W.L.R. 944.

(§ I A 2—10)—DISQUALIFICATIONS—INTEREST IN MUNICIPAL CONTRACTS—SHAREHOLDER.

A contributor to the funds of an association interested in gas contracts with a municipality, to whom shares are allotted to the extent of the amount of his contribution out of the stock of the company formed out of the association, without his knowledge or approval, does not necessarily prove him a shareholder and hence a party interested in a contract with the municipality so as to disqualify him from the office of alderman, under sec. 22 (1) of the Edmonton Charter, 1913, ch. 23. [Re Empire, etc., Somerville's Case, L.R. 6 Ch. 266, applied; Rex ex rel. Coleman v. O'Hare, 2 P.R. (Ont.) 18, referred to.]

Rex ex rel. La Fleche v. Sheppard, 24 D.L.R. 404, 9 A.L.R. 1, 8 W.W.R. 1020.

(§ I A 2—10)—DISQUALIFICATION—INTERESTS IN MUNICIPAL CONTRACTS.

The Revised Statutes of Quebec of 1888,

art. 4215, which prohibits any person having a contract or interest in a contract with a municipal corporation from being appointed a member of the council of such corporation, does not apply to sales of goods, made at different times, by a municipal councillor in the course of his trade to the corporation which he represents.

Foster v. Currie, 48 Que. S.C. 103.

(§ I A 2—10) — DISQUALIFICATIONS — INDEBTEDNESS TO MUNICIPALITY—TAXES.

Sec. 22 (1) of the Edmonton Charter, 1913, ch. 23, disqualifying any person for the office of mayor or alderman if such person is indebted to the municipality, is intended to apply only to an ordinary indebtedness, but not to a debt for taxes, though declared to be a statutory debt by sec. 369.

Rex ex rel. La Fleche v. Sheppard, 24 D.L.R. 404, 9 A.L.R. 1, 8 W.W.R. 1020.

(§ I A 2—11)—ELIGIBILITY FOR ALDERMAN—RESIDENCE.

A person who has his residence in the city of Lachine and who for five months boards with his wife in an apartment at Montreal, in order to educate his children, all the time keeping his house in Lachine and going there at times and returning to live in it after the expiration of the five months, has not changed his ordinary residence in Lachine and continues to be eligible in this respect for the position of alderman of that city.

Latour v. Lefebvre, 47 Que. S.C. 261.

(§ I A 2—14)—TIME OF DETERMINING DISQUALIFICATIONS.

The disqualifications against the holding of office of mayor or alderman prescribed by sec. 22 of the Edmonton Charter, 1913, ch. 23, are limited to the date of election and are not intended to apply to disqualifications from sittings.

Rex ex rel. La Fleche v. Sheppard, 24 D.L.R. 404, 9 A.L.R. 1, 8 W.W.R. 1020.

B. APPOINTMENT AND ELECTION.**(§ I B—28)—APPOINTMENT OF PARISH OFFICERS — SESSIONS — QUALIFICATIONS — OATH.**

A county council, under sec. 52 of the Municipalities Act, which provides that "meetings may be adjourned from day to day for eight days in the whole and no longer," can only sit for eight days, including Sunday and the first day of the session, and the appointment of parish officers on January 28, by a council which met in regular session on January 20, and adjourned from day to day, is illegal. Under sec. 65 of the Act, the council must appoint parish officers at its first general meeting, and has no power to appoint such officers at its semi-annual meeting in July. Under a special Act passed April 2, 1914, 4 Geo. V. ch. 67, the councillors for the parish of Durham were authorized to appoint for that year the parish officers for that parish, and the parish clerk, when so appointed, was required, within six days after such appoint-

ment, to post up a list of the officers so appointed, who should qualify for their respective offices in ten days after such posting, otherwise their office should be deemed vacant. Held, the council had no right to declare vacant the office of officers properly appointed under the Act and performing the duties thereof on the ground that the offices had been vacated because no return of the officers having taken the oath of office had been filed with the secretary-treasurer of the county. Under sec. 88 of the Act it will be assumed that persons properly appointed and acting as parish officers have taken the oath of office.

The King v. Munic. Restigouche; Ex p. Murchie, 43 N.B.R. 115.

C. QUALIFYING; INDUCTION; VACANCY.

(§ I C—30) — INELIGIBILITY — ARREARS IN TAXES.

The nomination is a part of the election under the Municipal Act, R.S.O. 1914, ch. 192, sec. 53, so as to render ineligible as a candidate for municipal councillor a person who was at the time of nomination in arrears for taxes to the municipality, although such arrears were paid before the date of polling. [*Rex ex rel. Zimmerman v. Steele*, 5 O.L.R. 565; *Kennedy v. Dickson*, 7 O.W.N. 769, referred to.]

Rex ex rel. Mitchell v. McKenzie, 21 D.L.R. 438, 33 O.L.R. 196, 7 O.W.N. 841.

(§ I C—31)—DELEGATE OF SUPERINTENDENT OF PUBLIC INSTRUCTION—OATH.

One who is delegated by the superintendent of public instruction to hold an enquête under this Act is not a Royal Commissioner and is not obliged to be sworn. An action does not lie even under art. 50, C.P.Q., to attack the legality of proceedings by officials who are subject to the department of the provincial secretary and who acted upon his instructions and with his authority.

Therrien v. Mercier, 24 Que. K.B. 352.

E. RESIGNATION OR DEPRIVATION OF OFFICE.

(§ I E 1—46)—DISQUALIFICATION—CONTRACT WITH MUNICIPALITY.

The disqualification of a municipal councillor under art. 205, M.C., Que., because of a contract with the municipality for road repairs, from which he obtains a profit, continues after the completion of the work contracted for and the receipt of payment therefor. [*Houle v. Brodeur*, 18 Que. S.C. 440, and *Damon v. Lamy*, 44 Que. S.C. 489, doubted.]

Robillard v. Sloan, 22 D.L.R. 538, 45 Que. S.C. 496.

(§ I E 1—46)—DISQUALIFICATION—NOTICE OF RENUNCIATION—QUO WARRANTO.

The notice of renunciation provided in art. 207, M.C., Que., to be given by a disqualified municipal councillor provides a means of avoiding quo warranto proceedings which otherwise might be taken against him because he would be deemed to have con-

tinued in the exercise of his office unless the notice were given; the notice is by no means a condition precedent to quo warranto proceedings. [*Delage v. Germain*, 12 Que. L.R. 149, applied; *Damon v. Lamy*, 44 Que. S.C. 489, doubted.]

Robillard v. Sloan, 22 D.L.R. 538, 45 Que. S.C. 496.

(§ I E 3—56)—DISQUALIFICATION — CONVICTION FOR UNLAWFUL SALE OF LIQUOR.

If it be intended to seek the disqualification of the accused as a member of a municipal council because of his illegal sale of intoxicating liquor in contravention of the Liquor License Act, C.S.N.B. 1903, ch. 22, the accused must be both charged with and convicted of having committed the offence knowingly, such being an essential to the disqualification although not in all circumstances necessary to a conviction for the illegal sale. (Per White, J.)

Ex parte Murchie; Rex v. Gloucester, 24 Can. Cr. Cas. 228.

(§ I E 3—58)—DISMISSAL OF TAX ASSESSOR—SUFFICIENCY OF NOTICE OF HEARING.

Notice of a council meeting to consider a recommendation for the dismissal of one from the office of assistant assessor must be served personally and not by merely leaving a copy of the notice with someone at the place of residence of the person to be served.

The King v. City of Halifax; Re Stevens, 25 D.L.R. 113.

II. Rights; powers; duties; liabilities.

A. IN GENERAL.

(§ II A—74)—ACCOUNT BY MUNICIPAL SECRETARY-TREASURER — FORMAL REQUIREMENT—VERIFICATION—WAIVER.

The obligation of the secretary-treasurer of a municipal corporation to render an account, created by a special Act, is a matter of private order, and the municipality can dispense with this account or with the formalities which should accompany it. Thus a municipal council, which for five years permits its secretary-treasurer to render his account without attesting it under oath, as required by the corporation's charter, thereby renounces the right, and the payment of the salary of the secretary-treasurer after his last account is rendered is an acquiescence in and an acceptance of it.

Pérodeau v. Richard, 48 Que. S.C. 165.

B. COMPENSATION AND FEES.

(§ II B—80) — FAILURE TO QUALIFY AFFECTING RECOVERY.

Fence-viewers who have failed to take the oath of qualification explicitly required of them under R.S.N.S. ch. 70, sec. 93, before entering upon their duties cannot recover moneys which would otherwise be coming to them as fence-viewers.

Hannigan v. McLeod, 21 D.L.R. 509, 48 N.S.R. 340.

III. Officers de facto.**(§ III—93)—RIGHT TO FEES.**

An officer cannot recover fees or set up a right of property or right to recover money that accrues to him in virtue of his office, on the ground that he is an officer de facto unless he be also an officer de jure. [People v. Hopson, 1 Denio N.Y. 573, approved; R. v. Gibson, 29 N.S.R. 88, referred to.]

Hannigan v. McLeod, 21 D.L.R. 509, 48 N.S.R. 340.

OIL LEASES.

See Mines and Minerals.

OPTION.

Ratification of option given by real estate agent, see Principal and Agent; Brokers.

Option on land, see Vendor and Purchaser; Contracts.

ORAL CONTRACT.

In general, see Contracts.

Specific performance of, see Specific Performance.

ORAL EVIDENCE.

See Evidence, VI.

ORDER.

Judicial orders generally, see Judgment; Motions and Orders; upon foreclosure, see Mortgage; Vendor and Purchaser.

ORDINANCES.

Municipal ordinances and by-laws, see Municipal Corporations.

ORIGINATING SUMMONS.

Generally, see Motions; Writ and Process.

Power of Court to issue, see Courts.

OUSTER.

From office, see Officers; Quo Warranto.

OVERHOLDING TENANT.

See Landlord and Tenant.

PARDON.

In general, see Criminal Law, IV.

Condonation of marital offences, see Divorce and Separation.

PARENT AND CHILD.**I. RELATION; RIGHTS AND OBLIGATIONS GENERALLY.****II. LEGITIMATION.****III. ADOPTION.****IV. RIGHT TO CUSTODY OF CHILD.**

Damages to parent for injuries to child, see Damages; Death.

Custody, disabilities and liabilities of infants, actions by or against, see Infants.

Injuries to children in employment, see Master and Servant.

Dangerous attractions causing injuries to children, see Negligence.

Determination of custody of children, see Habeas Corpus; Divorce and Separation.

I. Relation; rights and obligations generally.**(§ I—1)—LIABILITY OF PARENT FOR AUTOMOBILE PURCHASED BY CHILD—AGENCY.**

A person who sells an automobile to an infant under 21, and takes his agreement and lien notes for the price, has the onus cast upon him of proving the son's agency for the parent if he seeks to make the latter liable, and such is not conclusively shewn by the license having been taken in the parent's name.

Wheeler v. Chapman, 21 D.L.R. 660.

[See also Western Motors v. Gilfoy, 25 D.L.R. 378.]

(§ I—4)—LIABILITY OF PARENT FOR MAINTENANCE FURNISHED—QUANTUM—CHILD'S SERVICES.

The plaintiff cared for and maintained the defendant's infant son for a period of more than 12 years, the child when two years old going to live with the plaintiff, and remaining until he was taken away by the defendant, at the age of 15:—Held, upon the evidence, that some compensation was contemplated between the parties; there was an implied contract, enforceable at law, to pay a quantum meruit. In fixing a sum to be paid by the defendant for the care and maintenance of his child, regard was had to the boy's services to the plaintiff upon his farm for 3 years before the withdrawal; the defendant having said at the beginning that if the boy remained for any length of time it would not be right to take him away when he became of use. Review of the authorities.

Latimer v. Hill, 35 O.L.R. 36, 9 O.W.N. 236.

(§ I—4)—JUDGMENT FOR CHILD'S SUPPORT—TERMINATION UPON DEATH OF PARENT.

An allowance for maintenance awarded to a natural child by judgment against its father ceases on the death of the latter, and is not a charge on the succession.

Filiatrault v. Meloche, 47 Que. S.C. 108.

(§ I—7)—SON WORKING FOR FATHER ON FARM—WAGES—PRESUMPTION—REBUTTAL—CONTRACT—EVIDENCE.

Smith v. Smith, 8 O.W.N. 615, 9 O.W.N. 63.

(§ I—8)—PARENT'S LIABILITY FOR DAMAGE CAUSED BY CHILD—UNAUTHORIZED EMPLOYMENT.

A person who hires the services of a minor, without the father's participation in the contract, has no recourse against the father when the minor causes damage to his employer even if the father had been aware of the employment of his son.

Bergeron v. Dagenais, 47 Que. S.C. 492.

II. Legitimation.**III. Adoption.****IV. Right to custody of child.**

See *Infants*.

(See previous Annual Digests.)

PARKS AND SQUARE.

Municipal regulation and control of, see *Municipal Corporations*; *Highways*.

PAROL CONTRACTS.

Specific performance of, see *Specific Performance*.

In general, *Statute of Frauds*, see *Contracts*, I.

Parol evidence to establish, see *Evidence*, VI.

PAROLE.

See *Criminal Law*, IV.

PARTIAL INTESTACY.

See *Wills*, III; *Executors and Administrators*.

PARTICULARS.

Furnishing particulars of matters pleaded generally, see *Pleadings*, I.

PARTIES.**I. PLAINTIFFS.**

A. Persons who may or must sue; interested parties.

B. Joinder.

II. DEFENDANTS.

A. Proper and necessary parties.

B. Joinder.

III. BRINGING IN; INTERVENTION; THIRD PARTY.**IV. SUBSTITUTION.**

To proceeding by *certiorari* or *mandamus*, see *Certiorari*; *Mandamus*.

In injunction proceeding, see *Injunction*.

Who are concluded by judgment, *res judicata*, see *Judgment*, II.

On foreclosure, see *Mortgage*.

Description of, in pleading, see *Pleading*, II.

Foreign corporations as, see *Companies*, VII.

Action for death, see *Death*.

Who may sue to set aside invalid instruments, see *Fraudulent Conveyances*; *Assignment for Creditors*; *Chattel Mortgage*; *Bills of Sale*.

In actions by or against infants, see *Infants*.

Who may have remedy against nuisance, see *Nuisances*, II.

Who may contest will, see *Wills*.

Consolidation of actions against different defendants, see *Action*; *Admiralty*.

Actions by or against unincorporated association, see *Associations*.

Interest of parties attacking municipal by-laws, see *Municipal Corporations*.

Annotations.

Irregular joinder of defendants; separate and alternative rights of action for repetition of slander: 1 D.L.R. 523.

Persons who may or must sue; criminal information; relator's status: 8 D.L.R. 571.

I. Plaintiffs.**A. PERSONS WHO MAY OR MUST SUE; INTERESTED PARTIES.**

(§ I A 4—46)—**RIGHT OF RATEPAYER TO COMPEL COLLECTION OF TAXES.**

Where a municipality has allowed a certain proportion of the taxes levied against a property to remain unpaid for a number of years, a ratepayer has no status to maintain an action against the municipality to compel it to collect such arrears. [Norfolk v. Roberts, 13 D.L.R. 463, 28 O.L.R. 593, affirmed.]

Norfolk v. Roberts, 23 D.L.R. 547, 50 Can. S.C.R. 283.

(§ I A 4—46)—**ACTION TO ANNUL ILLEGAL VALUATION ROLL.**

A ratepayer, particularly one having a contract with the municipality by which the amounts of taxes he is obliged to pay are based upon a valuation roll, has a sufficient interest to maintain an action to set aside the whole of such valuation roll because of illegality.

La Cie D'Approvisionnement D'Eau v. La Ville Montmagny, 25 D.L.R. 292, 24 Que. K.B. 416.

B. JOINDER.

(§ I B—55)—**ADDITION OF CO-PLAINTIFF — CLASS SUIT—COMPANY—ALLEGED ESTOPPEL OF ORIGINAL PLAINTIFF—RULE 134.**

Crawford v. Bathurst Land and Development Co., 8 O.W.N. 325.

(§ I B—57)—**ACTIONS AGAINST MUNICIPALITIES—JOINDER OF ATTORNEY-GENERAL.**

The Attorney-General is a necessary party only when the public interest in the subject-matter of the action is province-wide in its extent, and not when that interest is confined to a community forming only a part of the province.

Livingstone v. City of Edmonton, 24 D.L.R. 191, 8 W.W.R. 976, 31 W.L.R. 609.

[Varied as to costs in 25 D.L.R. 313.]

II. Defendants.**A. PROPER AND NECESSARY PARTIES.**

(§ II A 1—66)—**JUDGMENT CREDITOR—FRAUDULENT CONVEYANCE—ACTION TO SET ASIDE.**

In an action by a judgment creditor to set aside as fraudulent a conveyance by the debtor, where no relief is asked against the debtor and no special circumstances appear making it desirable to have him before the

Court, the debtor is not a necessary party to the action. [McDonald v. Dunlop, 2 Terr. L.R. 177; Bank of Montreal v. Black, 9 Man. L.R. 439; Scott v. Burnham, 19 Gr. 234; Beattie v. Wenger, 24 A.R. (Ont.) 72; Gallagher v. Beale, 14 B.C.R. 247, followed; Belcher v. Hudsons, 1 S.L.R. 474, distinguished.]

Mills v. Harris, 21 D.L.R. 233, 8 S.L.R. 14, 8 W.W.R. 538.

(§ II A 1—66)—ACTION BY CREDITOR TO SET ASIDE FRAUDULENT CONVEYANCE.

A judgment debtor is a proper, although not a necessary party to an action by a judgment creditor to set aside a conveyance by the debtor as fraudulent. [Gallagher v. Beale, 14 B.C.R. 247, not followed.]

Gibson v. Franklin, 21 B.C.R. 181.

(§ II A 1—66)—ACTION TO SET ASIDE FRAUDULENT CONVEYANCE.

The grantor is a necessary party to an action by a simple contract debtor to set aside a fraudulent conveyance, and must be made so in the first instance.

Miller v. Kuss, 9 W.W.R. 763.

[See also 25 D.L.R. 816.]

(§ II A 2—71)—ACTION AGAINST CROWN—ATTORNEY-GENERAL.

The non-existence of any right to bring the Crown into Court does not give the Crown immunity from all law, or authorize the interference by the Crown with private rights at its own mere will, and the practice in England in cases where no petition of right will lie is to sue the Crown by the Attorney-General under a declaratory order obtained. [Judgment of Canada Supreme Court reversed; Irvine v. Hervey, 13 D.L.R. 868, 47 N.S.R. 310, affirmed.]

Eastern Trust Co. v. Mackenzie, Mann & Co., 22 D.L.R. 410, [1915] A.C. 750, 113 L.T. 346, 31 W.L.R. 248.

(§ II A 7—100)—HUSBAND AND WIFE—ACTION TO SET ASIDE FRAUDULENT CONVEYANCE.

This was an action by a judgment creditor to set aside a conveyance of land by W. E. Franklin to his wife, Annie S. Franklin, as being fraudulent. Both the husband and wife were joined as defendants, and on February 8, 1915, the solicitor for W. E. Franklin made an application in Chambers before the Chief Justice of British Columbia for an order striking him out as being an unnecessary and improper party, and in making the application he relied on the authority of Gallagher v. Beale, 14 B.C.R. 247. The Chief Justice held that the husband was a proper, although not an unnecessary party, and dismissed the application with costs.

Gibson v. Franklin, 7 W.W.R. 1411.

(§ II A 8—105)—FORECLOSURE ACTION—ASSIGNEE OF PURCHASER.

An assignee of a purchaser to whom the purchaser's interest under the contract had been assigned is a necessary party defendant to an action for the foreclosure of the con-

tract for the purchase of the land, and his non-joinder will affect the judgment rendered in the action.

Gale v. Powley, 24 D.L.R. 450, 8 W.W.R. 1312, 32 W.L.R. 65.

(§ II A 8—105)—SPECIFIC PERFORMANCE OF SALE OF LAND—PREDECESSOR IN TITLE.

The predecessor in title (remaining registered proprietor) of a vendor of land is not a proper party to an action for specific performance brought against the purchaser.

Gibbs v. Gibson, 9 W.W.R. 190.

(§ II A 8—106)—FORECLOSURE OF LAND CONTRACT—UNKNOWN ASSIGNS OR SUB-PURCHASERS.

The plaintiff in an action for foreclosure of an agreement for the sale or exchange of lands is under no obligation to make assignees or sub-purchasers parties to the action or to the motion for rescission, where the defendant fails to disclose in the pleadings or otherwise actual facts relating to any sub-sale or any notice to the plaintiff of any such assignments. [M'Creight v. Foster, L.R. 5 Ch. App. 604, L.R. 5 H.L. 321, applied.]

Plainview Farming Co. v. Transcontinental Townsite Co., 25 D.L.R. 594, 25 Man. L.R. 677, 9 W.W.R. 247, 32 W.L.R. 499.

B. JOINDER.

(§ II B—118)—ACTION FOR NEGLIGENCE — ELECTRIC COMPANY AND MUNICIPALITY.

The statement of claim set up that the defendant city had, for the purposes of its line of electric trolley cars, fastened a guy wire to a telegraph pole of the Canadian Northern Railway Company on which the defendant electric light company had a high power wire, and by so doing caused the insulation upon the latter wire to be rubbed off, in consequence of which the plaintiff, while working on the pole in the discharge of his duty, received the injury complained of. The plaintiff claimed also that the electric light company was liable to him for negligence in maintaining its high power wire void of insulation, thus causing the plaintiff's injury. The two defendants were not charged with any joint tort, nor were they charged separately with the same wrongful act, but each was charged with a separate and distinct act or omission:—Held, that the local Judge at Brandon was right in dismissing an application of the defendant electric light company to compel the plaintiff to elect as to which defendant he would proceed against, and that, under rules 196 and 197 of the King's Bench Act, the plaintiff might have both his complaints tried in the same action. [Campania Sansinena v. Houlder, [1910] 2 K.B. 354; Gas Power Age v. Central Garage Co., 21 Man. L.R. 496, and Till v. Town of Oakville 25 O.W.R. 476, 31 O.L.R. 405, followed.]

Young v. Brandon, 25 Man. L.R. 189.

[See also 25 D.L.R. 296.]

(§ II B—119)—HYPOTHECARY CREDITORS.

A purchaser who has ascertained that

there are hypothecs upon the property that he has purchased cannot demand that his vendor shall be condemned to cause these hypothecs to be expunged from the registry without making the hypothecary creditors parties.

Dorion v. Jodoin, 47 Que. S.C. 414.

(§ II B—119)—ADDITION OF DEFENDANT UPON ITS OWN MOTION, AFTER JUDGMENT—ASSIGNEE OF ORIGINAL DEFENDANT—ACTION BROUGHT IN NAME OF COMPANY IN LIQUIDATION BY LEAVE OBTAINED IN WINDING-UP PROCEEDING—NO LEAVE OBTAINED TO MAKE APPLICATION—JURISDICTION OF MASTER IN CHAMBERS.

Bailey Cobalt Mines, Ltd., v. Benson, 9 O.W.N. 243.

III. Bringing in; intervention; third party.

(§ III—122)—INTERVENTION OF ATTORNEY-GENERAL—MUNICIPAL ACTIONS.

The Attorney-General is not a necessary party to an action in which the public outside of the municipality have no interest. [*Gallagher v. Armstrong*, 3 A.L.R. 443, followed.]

Livingstone v. Edmonton Industrial & City of Edmonton, 25 D.L.R. 313, 9 W.W.R. 794, varying as to costs 24 D.L.R. 191, 8 W.W.R. 976, 31 W.L.R. 609.

(§ III—122)—ACTIONS AGAINST MUNICIPALITIES—INTERVENTION OF ATTORNEY-GENERAL.

The intervention of the Attorney-General is not necessary in an action by a ratepayer against a municipality for the purpose of setting aside an agreement illegally entered into by the latter and preventing its enforcement. [*Hope v. Hamilton Park Comm'rs*, 1 O.L.R. 477, disapproved; *Keay v. City of Regina*, 6 D.L.R. 327, distinguished; *MacIlreith v. Hart*, 39 Can. S.C.R. 657, approved.]

Livingstone v. City of Edmonton, 24 D.L.R. 191, 8 W.W.R. 976, 31 W.L.R. 609. [Varied as to costs in 25 D.L.R. 313.]

(§ III—122)—INTERVENTION OF ATTORNEY-GENERAL—ATTACKING CONSTITUTIONALITY OF ORDER-IN-COUNCIL.

The Attorney-General is not a necessary party to an action involving an attack upon the constitutionality of an order-in-council.

Shives Lumber Co. v. Chaleur Bay Mills, 25 D.L.R. 262, 24 Que. K.B. 408.

(§ III—124)—THIRD PARTY NOTICE—SUBSTANTIVE MOTION FOR—CONTRIBUTION AND INDEMNITY—COVENANTS RUNNING WITH LAND—AGREEMENT OF SALE—ASSIGNMENT—PRIORITY OF CONTRACT.

Wilson v. Mishler, 25 D.L.R. 822, 9 W.W.R. 125, 32 W.L.R. 400.

IV. Substitution.

(See previous Annual Digests.)

PARTITION.

(§ I—2)—RIGHT OF HEIR—LOSS OF USUFRUCT ESTATE BY SECOND MARRIAGE.

Notwithstanding a donation of the bare ownership made by a surviving consort, one of the heirs has the right of action to demand partition of the usufruct of the property during the wife's life which she has herself lost by her second marriage.

Labelle v. Labelle, 47 Que. S.C. 385.

(§ I—2)—ACTION BY UNIVERSAL LEGATEE—REFORMATION OF ACCOUNTS.

Action for partition, for an account or for reformation of accounts and partition, brought by a universal legatee against the co-legatees, has as its ulterior object the payment to the plaintiff of the part which should come to her in the succession of the testator after the winding-up of the estate, and all the conclusions to this effect should and can be taken in one and the same action. It is immaterial that the conclusions demanding the liquidation are the main conclusions of the action, and that the condemnation to payment of the party in possession is a subsidiary conclusion or vice versa.

Laberge v. Laberge, 48 Que. S.C. 276.

PARTNERSHIP.

I. NATURE; CREATION; WHAT CONSTITUTES.

II. RIGHTS AND POWERS OF PARTNERS.

III. LIABILITY OF PARTNERS; RIGHTS OF CREDITORS.

IV. PARTNERSHIP REAL ESTATE.

V. RIGHTS OF MEMBERS AS TO EACH OTHER.

VI. DISSOLUTION; EFFECT OF.

VII. ACTIONS.

VIII. LIMITED OR SPECIAL PARTNERSHIP.

Annotation.

Effect of war on alien partnerships and firms: 23 D.L.R. 375, 378.

I. Nature; creation; what constitutes.

(§ I—3)—SHARING PROFITS.

A contract whereby one person is to manage the store of another for a fixed amount weekly plus a quarter share of the net profits and the circumstance that the names of both were joined as a firm name in operating the store business, disclose a partnership. [*Walker v. Hirsch*, 27 Ch.D. 460, referred to.]

Orchard v. Dykeman, 21 D.L.R. 106, 43 N.B.R. 181.

(§ I—3)—JOINT INTEREST IN CROP.

An agreement whereby one is to receive one-third of the grain for money advanced for raising the crop, does not create a partnership, but merely a joint ownership of the crop.

International Harvester Co. v. Jacobsen, 24 D.L.R. 632, 9 W.W.R. 87, 32 W.L.R. 332.

(§ I—3)—AGREEMENT CONSTITUTING.

A document providing, "The said A. Soucier engages to furnish the said Boyer

with a stock of men's and women's boots and shoes to the amount of \$4,000 to \$5,000 according to the requirements of the trade; the said A. J. Boyer agrees to rent a shop in the city of Montreal and to carry on in it the shoe business with the stock furnished by the said A. Soucier; it is agreed that all expenses being paid the two parties will share the net profits realized by the said Boyer in the said business. Signed in duplicate at Montreal this 11th of September, 1911. This agreement is good for seven months," constitutes a partnership between the parties.

Dupont v. Boyer, 47 Que. S.C. 503.

(§ I—3) — CONSTRUCTION — SCOPE — CONTEMPLATED PROFITS FROM OIL LEASES AND AGREEMENTS — "EXTENSION" — PROFITS FROM NATURAL GAS LEASES AND AGREEMENTS — "OIL AND ITS PRODUCTS" — FINDINGS OF FACT OF TRIAL JUDGE — APPEAL.

Hay v. Lacoste, 8 O.W.N. 196.

[Affirmed by Canada Supreme Court, Feb. 1, 1916.]

(§ I—3) — CONTRIBUTION OF CAPITAL — CONSTRUCTION OF WRITTEN AGREEMENTS — EVIDENCE TO VARY.

Richman v. Brandon, 8 O.W.N. 467.

II. Rights and powers of partners.

(See previous Annual Digests.)

III. Liability of partners; rights of creditors.

(§ III—10) — FORMATION INTO COMPANY.

A partnership is not relieved from any liability for the price of goods purchased in the firm name because of its formation into an incorporated company, if it appears that recourse for the price of goods was in point of fact sought from the partners and that sec. 20 of the Joint Stock Companies Act (Man.), respecting the payment of stock, had not been complied with.

Nisbet v. Tappe, 22 D.L.R. 290, 31 W.L.R. 449.

(§ III—10) — EFFECT OF INCORPORATION ON NOTES PREVIOUSLY MADE.

When a note is signed by the members of a partnership, later on incorporated, and is discounted at a bank, one of the makers cannot be discharged without the consent of the bank, and he is not discharged by the fact that the new corporation passed a resolution authorizing the bank to erase his name from the note, and that the bank manager erased his name and informed him that he was liberated from his liabilities towards the bank.

Gendreau v. Widder, 48 Que. S.C. 142.

(§ III—11) — HOLDING OUT AS PARTNER — EVIDENCE OF HOLDING OUT TO OTHERS THAN PLAINTIFF SEEKING TO MAKE DEFENDANTS LIABLE BY ESTOPPEL — INADMISSIBILITY — EVIDENCE IMPEACHING DEFENDANTS' VERACITY — FAILURE TO ES-

TABLISH HOLDING OUT TO PLAINTIFF — INFANT — PARTIES.

Ray v. Gettas, 8 O.W.N. 318.

(§ III—14) — INDIVIDUAL AND FIRM CREDITORS.

The fact that a son is in partnership with his father does not, in the absence of positive evidence that it was in the scope of the partnership business, render the firm liable for accounts in connection with automobile rentals and supplies contracted by the son.

Western Motors Ltd. v. Gilfoy, 25 D.L.R. 378, 9 W.W.R. 770.

[See also Wheeler v. Chapman, 21 D.L.R. 660.]

(§ III—14) — INDIVIDUAL AND FIRM DEBTS — APPLICATION OF PAYMENTS.

If a partner is indebted on his own account to a person to whom the firm is also indebted, and that partner with the moneys of the firm makes a payment to the creditor without specifying the account to which it is to be paid, the payment must be taken to have been made on the partnership account and must be applied accordingly. [Thompson v. Brown, 1 M. & M. 40, applied.]

Kirk v. Ingraham, 22 D.L.R. 793, 48 N.S.R. 493.

IV. Partnership real estate.

(§ IV—15) — LAND SYNDICATE — DUTIES OF MEMBERS — OPTION.

There is no duty on the part of the member of a land syndicate to exercise an option to lands he obtained at a lower price in favour of the syndicate. [Gluckstein v. Barnes, [1900] A.C. 240; Bentley v. Craven, 18 Beav. 75; Re Cape Breton, 29 Ch.D. 795, distinguished.]

Merriam v. Kenderdine Realty Co. (No. 1), 25 D.L.R. 369, 34 O.L.R. 556, 9 O.W.N. 127.

(§ IV—16) — SUBDIVISION LANDS — JOINT UNDERTAKING.

Where persons acquired certain land in common with the intention of sub-dividing it into lots and selling them as a joint venture out of which each is to receive a portion of the profits, a partnership is created in respect to the contemplated transactions. [Manitoba Mortgage Co. v. Bank of Montreal, 17 Can. S.C.R. 692, followed.]

Dart v. Drury, 23 D.L.R. 399, 25 Man. L.R. 258, 8 W.W.R. 173, 30 W.L.R. 809.

(§ IV—16) — PURCHASE OF PARTNER'S LAND FROM FIRM — PAYMENTS TO WHOM.

A purchaser who pays to a partnership in its firm name the price of an immovable that he acquired from it frees himself from obligation to each of the partners personally although the immovable was at the time of the sale the individual property of the partners.

Furois v. Grace, 48 Que. S.C. 89.

(§ IV—17)—DEATH OF PARTNER—ACTION BY SURVIVING PARTNER IN NAME OF FIRM—RULE 100—AMENDMENT OF STYLE OF CAUSE—LAND CONVEYED TO PARTNERSHIP—TITLE—JOINT TENANCY—CONVEYANCING AND LAW OF PROPERTY ACT, R.S.O. 1914, CH. 109, SEC. 13—LAND VESTING IN SURVIVING PARTNER—ACTION FOR POSSESSION—RIGHT TO REDEEM—ABILITY OF SURVIVING PARTNER TO RE-CONVEY.
Harris v. Wood, 7 O.W.N. 611.

V. Rights of members as to each other.

(§ V—21)—MONEY REALIZED FROM ADMITTING NEW MEMBERS—DUTY OF ACCOUNTING.

The senior members of a firm possessing the majority interest therein, who, without the assent of the other partners, enter into an agreement whereby third parties are admitted to the firm, cannot properly retain a money consideration paid them for part of their shares of profits in pursuance of the arrangement, without an accounting thereof to the other partners.

Marwick v. Kerr, 25 D.L.R. 250, 24 Que. K.B. 321.

(§ V—21) — ACCOUNTING — INCONSISTENT CLAIMS—ELECTION.

There is no inconsistency between a prayer for an accounting and a prayer for a declaration of ownership to a share of securities belonging to the firm, in an action for accounting between partners, and the defendant cannot by means of a dilatory exception demand the plaintiff to elect between the two.

Barnard v. De Sambor, 25 D.L.R. 344, 24 Que. K.B. 480.

(§ V—21)—ACCOUNTING—RIGHT OF PARTNER TO COMPENSATION.

A contract of partnership excludes any implied covenant for the payment of services rendered the firm by any of its members, and can not be allowed as an item in an accounting between them; nor does a partner who occupies the position as manager, stand in any better position.

Merriam v. Kenderdine Realty Co. (No. 1), 25 D.L.R. 369, 34 O.L.R. 556, 9 O.W.N. 127.

(§ V—21)—ACCOUNTING—PROFITS REALIZED IN OTHER CAPACITIES.

When two brothers accept a donation from their father of a lot of land in common with a forge, and in compliance with his wish work the forge together for 30 years without any agreement and without division, there is formed between them a special partnership for the purpose of the working of the forge. If, during the thirty years one of the associates has at the same time performed the duties of bailiff of the Superior Court and of secretary-treasurer of the municipality to the knowledge of his associate, for twenty-seven years without opposition or claim on the other's part, the latter cannot demand from him an account of the profits that he

has drawn from the exercise of these functions and claim to be paid half of them.

Ferland v. Ferland, 47 Que. S.C. 314.

(§ V—21)—PURCHASING SHARE OF OTHER PARTNER — RIGHT TO REIMBURSEMENT AFTER SETTLEMENT.

In a partnership composed of two members, if one of them purchases the share of the other, and the accounts between them are settled, without any claim on the part of the purchaser for the amounts withdrawn by the vendor, the purchaser cannot subsequently claim from his former partner reimbursement of part of this sum on the ground that he had not the right to take it.

Northwest Employment Agency v. Putnick, 24 Que. K.B. 285.

(§ V—21)—SECRET PROFITS AND COMMISSION — SALE OF LAND—DUTY OF ACCOUNTING.

Powell v. Maddock, 25 D.L.R. 748, 9 W.W.R. 353, 32 W.L.R. 619.

(§ V—21)—ACCOUNT—ALLOWANCE FOR USE BY FIRM OF PLANT OF INDIVIDUAL PARTNER — JUDGMENT—CONSTRUCTION—REFERENCE—REPORT—EVIDENCE—APPEAL.

McGillivray v. O'Toole, 7 O.W.N. 784.

(§ V—21)—PROFITS—ACCOUNT.

Bennett v. Pearce, 8 O.W.N. 278.

VI. Dissolution; effect of.

(§ VI—25)—INSOLVENCY—POWER TO ACKNOWLEDGE DEBT BARRED BY LIMITATIONS.

A partner has no implied authority to acknowledge a debt barred by limitations after the dissolution of the partnership by insolvency proceedings.

Quaker Oats Co. v. Denis, 24 D.L.R. 226, 8 W.W.R. 877, 31 W.L.R. 579, affirming 19 D.L.R. 327, 8 A.L.R. 31.

(§ VI—26)—LIABILITY OF SURVIVING PARTNER — NOTICE OF DISSOLUTION—CONTINUING PARTNERSHIP SIGN.

Notice to creditors of the death of a partner is not necessary to protect his estate from liability for debts contracted in the carrying on of the business after his decease. The omission of a surviving partner to remove the partnership sign from the premises in which the partnership business was carried on is not in itself a holding out by him that the partnership is still in existence and carrying on the business or that he is continuing the business on his own account in the partnership name.

Imperial Oil Co. v. Duplessis, 9 A.L.R. 59.

(§ VI—27)—GOODWILL OF FIRM—RIGHT OF SURVIVING PARTNER.

The goodwill of a firm forms a part of its ordinary assets, and in the absence of an express stipulation entitling the surviving partner to take over the interest of the deceased partner, no such right of pre-emption can be implied. [Hibben v. Colliester, 30 Can. S.C.R. 459; Wedderburn v. Wedderburn, 22 Beav. 84, followed.]

Re Wood Vallance & Co., 24 D.L.R. 831, 34 O.L.R. 278, 8 O.W.N. 583.

(§ VI—29)—DISSOLUTION BY DEATH — ACCOUNTING.

Every person who administers property not belonging to him should render an account of his administration even when he believes that he is carrying on his own business. The communists as well as the third-party holder in good faith is bound to render an account of his administration. The legatees or heirs who continue to administer the property of a partnership which existed in the lifetime of their auteur, are agents who should render an account of the administration to the surviving partner. The principle of the one who demands an account should allege that he himself has accounts or tenders his account does not apply to an action of the nature of pro socio. Ostigny v. Savignac, 47 Que. S.C. 376.

(§ VI—29)—PURCHASE OF FARM BY SYNDICATE—PROFITS RECEIVED BY TWO MEMBERS—CONCEALMENT AND MISREPRESENTATION—LIEN—SALE OF PROPERTY—DISSOLUTION OF PARTNERSHIP—ACCOUNT—PARTIES—COSTS—FORFEITURE.

Bell v. Smith, 8 O.W.N. 49, 504.

(§ VI—29)—DISSOLUTION BY DEATH OF PARTNER — ACCOUNT — REFERENCE—WINDING-UP—COSTS.

Rymal v. McGill, 7 O.W.N. 789.

VII. Actions.

(§ VII—30)—DISSOLUTION—ACTIONS BY CONTINUING PARTNER—JOINDER OF RETIRING PARTNER.

An action for the price of goods sold by a partnership is maintainable by the continuing partner after the dissolution of the firm, and it is not necessary to join as a plaintiff the retiring partner against whom the defendant has no claim and who has no beneficial interest in what is sought to be recovered.

Leeson v. Moses, 24 D.L.R. 158, 8 S.L.R. 222, 8 W.W.R. 1163, 31 W.L.R. 817.

VIII. Limited or special partnership.

(See previous Annual Digests.)

PART PAYMENT.

As interrupting Statute of Limitation, see Limitation of Actions.

As affecting Statute of Frauds, see Contracts.

See also Payment.

PART PERFORMANCE.

Under Statute of Frauds, see Contracts, I.

As ground for specific performance of parol agreements, see Specific Performance.

PARTY WALL.

Lateral support, see Lateral Support; Buildings.

(§ I—2)—COST OF CONSTRUCTION—RIGHT TO CONTRIBUTION—WHEN.

An owner who builds a party-wall can require his neighbour to contribute towards its construction, but on condition of conforming strictly with the law or with the agreement between them. If the wall is defective, and in contravention of law, it should be rectified by the owner before demanding from the neighbour the payment of his portion.

Laberge v. Fortin, 47 Que. S.C. 475.

PASS.

Liability for injury to person riding on, see Carriers; Street Railways; Master and Servant.

PASSAGEWAY.

See Easement.

PASSENGER CARRIERS.

See Carriers; Street Railways.

PATENTS.

I. IN GENERAL.

II. PATENTABILITY.

- A. Utility.
- B. Combinations.
- C. Anticipation; prior knowledge or use.

III. APPLICATION; CLAIMS AND SPECIFICATION.

IV. SALE; LICENSE; ASSIGNMENT.

- A. Sale.
- B. Use of purchased machine.
- C. License; assignment.

V. INFRINGEMENT.

For mining claim, see Mines and Minerals. Grant of public land by, see Public Land. Copyright, see Copyright; see also Trade-mark; Trade Name.

Jurisdiction to rectify register, see Courts, III C.

Annotations.

Construction of patents; effect of publication: 25 D.L.R. 663.

Patents on dust collecting means—vacuum cleaners: 25 D.L.R. 716.

I. IN GENERAL.

(§ I—4)—CONSTRUCTION — WHOLE INSTRUMENT TO BE LOOKED AT.

The proper mode of construing a patent is the same as would be applied in the case of any other written instrument, and it is not in accordance with the true canons of construction to read the claim alone without the specification; the whole document must be looked at to see what the claim is. [Consolidated Car Heating Co. v. Came, [1903] A.C. 509, followed; and see Annotation, 25 D.L.R. 663.]

Johnson v. Oxford Knitting Co., 25 D.L.R. 658, 15 Can. Ex. 340.

II. Patentability.

A. UTILITY.

(§ II A—10) — IMPROVEMENTS IN STREET PAVEMENTS — NOVELTY — SUFFICIENCY — UTILITY — PRESUMPTIONS AS TO.

Bitulithic & Contracting Co. v. Canadian Mineral Rubber Co., 25 D.L.R. 827, 8 W.W.R. 207.

C. ANTICIPATION; PRIOR KNOWLEDGE OR USE.

(§ II C—20) — PUBLIC USE — ABANDONMENT — EXPERIMENT — COMBINATION OF KNOWN MATERIALS — NEW RESULT.

A Canadian patent is void if the invention has been in public use or on sale anywhere, with the consent or allowance of the inventor, for more than one year prior to the application for such patent. The evidence to support the contention that there has been such a public use of the invention made or allowed by the inventor as to cause an abandonment of his right for patent, must be clear. [Elizabeth v. Pavement Co., 97 U.S. 128; Egbert v. Lippman, 104 U.S. 333, referred to.] The public use referred to in the Patent Act does not mean a use or exercise by the public, but a use or exercise in a public manner. [Carpenter v. Smith, 1 Web. Pat. Cas. 530, followed.] So long as an inventor is actually engaged in good faith in testing the operation of a machine to ascertain if it will accomplish the desired result and to shew it to be a practicable invention, this is not a public use. The rule is that the language in a patent should be liberally construed with a view of maintaining the validity of a patent. [Pacific Cable R. Co. v. Butte City Street R. Co., 55 Fed. R. 764, followed.] A new and useful combination of well-known materials or devices which produces a result not theretofore obtained is a proper subject of patent. [Toronto Telephone Co. v. Bell Telephone Co., 2 Can. Ex. 495, followed.] The application to a new purpose of old mechanical devices is patentable, when the new application lies so much out of the track of the former use as not to suggest itself to a person turning his mind to the subject. [Bicknell v. Peterson, 24 O.A.R. 427; Woodward v. Oke, 7 O.W.R. 881, referred to.] If one did not give thought and study he would not naturally conclude that concrete could be handled in a similar manner to grain or other material of a like nature.

Concrete Appliances Co. v. Rourke, 8 W.W.R. 6.

(§ II C—20) — ABSENCE OF NOVELTY AND USEFULNESS — ADAPTATION OF PRINCIPLE PREVIOUSLY DISCOVERED — EVIDENCE — INFRINGEMENT — COSTS.

Kohlmeyer v. Canadian Bartlett Automobile Co., 8 O.W.N. 457.

III. Application; claims and specification.

IV. Sale; license; assignments.

(See previous Annual Digests.)

V. Infringement.

(§ V—50) — SUFFICIENCY OF PROOF AS TO INFRINGEMENT — PRIMA FACIE EVIDENCE OF INVENTION.

Batho v. Invincible Renovator Mfg. Co., 25 D.L.R. 716.

PAVEMENTS.

In general, see Highways.

PAYMENT.

I. MEDIUM OF; VALIDITY.

II. TIME.

III. PLACE.

IV. APPLICATION.

V. DEMAND.

VI. RECOVERY.

Of cheque, see Banks; Cheques.

Presentation of negotiable paper for, indorsers, see Bills and Notes.

Of stock subscriptions, see Corporations and Companies.

Guaranty of, see Guaranty; Principal and Surety; Bonds.

Of judgment, see Judgment, V; Execution.

As affecting limitations of actions, see Limitation of Actions.

Of mortgage, acceleration clauses, see Mortgage; Chattel Mortgage; Bills and Notes.

Of purchase money, see Vendor and Purchaser.

Recovering back generally, time for payment, see Contracts; of taxes, see Taxes.

Payments under mistake, see Mistake.

Annotation.

Postponement under moratorium: 22 D.L.R. 865.

I. Medium of; validity.

(§ I—11) — BY CHEQUE — NATURE OF ACCEPTANCE.

In the absence of circumstances establishing the contrary, a cheque is always considered to be conditionally accepted, that is to say, subject to there being funds from which it may be paid.

Mailloux v. Beaudry, 48 Que. S.C. 9.

II. Time.

III. Place.

(See previous Annual Digests.)

IV. Application.

(§ IV—30) — PAYMENT BY THIRD PERSON — PLEA.

A debtor who is being proceeded against for the recovery of a judgment in the name of a person who has been paid by an undisclosed third party is entitled to establish before the Court all the circumstances under which that payment was made, as he may have a substantial ground of opposition as to a third party paying the judgment and enforcing same in the name of the judgment

creditor for the purpose of harassing the judgment debtor without giving notice of the transfer.

Coderre v. Cabana, 21 D.L.R. 436, 16 Que. P.R. 272.

(§ IV—30)—**DELEGATION OF PAYMENT—ACCEPTANCE—HYPOTHEC—NOVATION.**

The delegation of payment not accepted does not effect novation. So long as a delegation of payment of a price of sale made in the same deed is not accepted, the vendor may grant a discharge of the privileges and hypothecs which exist in his favour upon the immoveable sold. The privilege of the vendor belongs to himself only, and not to the creditor to whom the delegation is made who has not accepted it.

Economic Realty Limited v. Montarville Land Co., 48 Que. S.C. 519.

V. Demand.

(See previous Annual Digests.)

VI. Recovery.

(§ VI—50)—**LACK OF CONSIDERATION—ACTION TO RECOVER BACK.**

A voluntary payment of money implies a legitimate cause, and in an action to recover it back for want of consideration the plaintiff should allege and prove such lack of consideration.

Northwest Employment Agency v. Putnick, 24 Que. K.B. 285.

(§ VI—50)—**VOLUNTARY PAYMENT OF DEBT OF ANOTHER—ABSENCE OF REQUEST—RIGHT TO RECOVER FROM DEBTOR—JUDGMENT—ADMISSIONS ON EXAMINATION FOR DISCOVERY—RULE 222—COSTS.**

Levinson v. Gault and Mackey (No. 1), 9 O.W.N. 14.

PEACE OFFICERS.

See Constables; Officers.

PENAL STATUTE.

Construction of, see Statutes.

As to liquor laws, see Intoxicating Liquors.

As to criminal offences, see Criminal Law.

PENDENTE LITE.

Alimony, see Divorce and Separation.

See also Lis Pendens.

PEREMPTION.

Under Quebec practice, see Dismissal; Limitation of Actions.

PERFORMANCE.

Of contracts generally, see Contracts, IV.

Part performance of oral contract as affecting Statute of Frauds, see Contracts, I.

Specific performance, parol agreements partly performed, see Specific Performance.

PERJURY.

I. NATURE OF OFFENCE.

A. At common law.

B. By statute.

II. ELEMENTS OF OFFENCE.

A. In general.

B. Knowledge of falsity.

C. Proceedings on which oath is administered.

D. Authority to administer.

E. Form and making of oath.

F. Materiality of testimony.

G. Intent to mislead.

III. DEFENCES.

IV. SUBORNATION OF PERJURY AND ATTEMPTS.

V. SENTENCE AND PUNISHMENT.

See also Oath.

I. Nature of offence.

B. BY STATUTE.

(§ I B—20)—**STATUTORY DECLARATION—WHEN “REQUIRED”—PROOF OF LOSS.**

The word “required,” as used in sec. 155 of the Cr. Code, does not bear the meaning “legally compelled” in the sense that the person concerned would be subject to attachment or a penalty for refusing to take the oath, affirmation or statutory declaration on the section referred to. Sec. 36 of the Canada Evidence Act authorizes the taking of a statutory declaration “of any person making the same in attestation of the execution of any writing, deed, or instrument or of the truth of any fact or of any account rendered in writing. Sec. 37 of the Canada Evidence Act authorizes, but does not require, the making and the taking of statutory declarations by way of proof of loss. (Per Beck, J.)

Rex v. Nier, 9 W.W.R. 838, 25 Can. Cr. Cas.

II. Elements of offence.

A. IN GENERAL.

(§ II A—40)—**MISAPPREHENSION OF QUESTION.**

It is not perjury when a witness denies a fact which took place several years before, believing that, upon a general question, he was only obliged to answer as to what took place within a recent period.

Lafontaine v. Fournier, 48 Que. S.C. 113.

B. KNOWLEDGE OF FALSITY.

(§ II B—50)—**STATUTORY CORROBORATION AS TO FALSITY.**

Rex v. Nash, 8 W.W.R. 632, affirming 17 D.L.R. 725, 23 Can. Cr. Cas. 38, 7 A.L.R. 449, 6 W.W.R. 1390.

C. PROCEEDINGS ON WHICH OATH IS ADMINISTERED.

(§ II C—60)—**ON STATUTORY INVESTIGATION BEFORE A COMMISSIONER—PROOF.**

It is error constituting ground for setting

aside the acquittal of the accused and for ordering a new trial upon a charge of perjury before a statutory commissioner that the Judge trying the case without a jury (speedy trials clauses) declined to take cognizance of the original record of a superior Court produced by its officer for inspection unless the latter would deliver the same up to be filed, where such record was material to prove the proceedings in which the perjury was charged to have been committed and the prosecutor tendered a copy for filing.

Rex v. Judge, 24 Can. Cr. Cas. 354, 24 Que. K.B. 115.

PERMIT.

For buildings, see Buildings.

See also License.

Travelling pass, see Carriers; Railways; Street Railways; Master and Servant.

PERPETUITIES.

See Wills; Deeds.

PERSONAL INJURIES.

To passengers, see Carriers; Street Railways.

Measure of damages, see Damages, III.

On highways, see Highways.

Right of action for injuries to husband or wife, see Husband and Wife; Death.

Insurance against, see Insurance.

To employee generally, see Master and Servant.

Proximate cause of, see Proximate Cause.

On railroad tracks, see Railways; Street Railways.

Instructions in action for, see Trial.

Death from, see Death.

PERSONAL PROPERTY.

Mortgage on, see Chattel Mortgage.

Damages for injury to or taking or detention of, see Damages, III.

Sale of, see Sale; Bills of Sale.

PETITION OF RIGHT.

See Crown; Exchequer Court.

PETITORY ACTION.

See Action.

PHARMACY.

See Drugs and Druggists.

PHYSICIANS AND SURGEONS.

I. RIGHT TO PRACTISE, OFFENCES.

A. In general.

B. By particular methods.

II. RIGHTS, DUTIES AND LIABILITIES.

Practice of dentistry, see Dentists.

Review of conviction for unlawful practice of dentistry, see Certiorari, II—28.

Reasonableness of charges for attendance upon decedent, see Executors and Administrators, IV.

I. Right to practise, offences.

A. IN GENERAL.

(§ I A—1) — UNLAWFUL PRACTICE — ASSISTANT.

One who professes to practise medicine really practises it, this being the effect of the Medical Profession Act, sec. 63a, clauses a and b. An unregistered person cannot do, as agent, assistant or associate of another what he cannot do in his own name and on his own behalf.

Re Wagner, 9 W.W.R. 1000, 25 Can. Cr. Cas.

(§ I A—6) — SCOPE OF LICENSE TO PRACTISE — "MECHANICAL PROCESSES" — DENTISTRY.

The words "mechanical processes" used in art. 4938, R.S.Q. 1909, do not give to physicians the right to make use of the mechanical and operative part of dental surgery.

Milot v. Marchildon, 47 Que. S.C. 41.

B. BY PARTICULAR METHODS.

(§ I B—10) — CHIROPRACTOR — RIGHT TO RECOVER FEES.

A chiropractor not registered as a medical practitioner cannot recover for his services, as a chiropractor. [R. v. Raffenberg, 12 W.L.R. 419; Reg. v. Valteau, 3 Can. Cr. Cas. 435; R. v. Harvey, 16 O.L.R. 433; Re Ontario Medical Act, 13 O.L.R. 501; and Bergman v. Bond, 14 Man. L.R. 503, considered.]

Cook v. Foreman, 9 W.W.R. 470.

II. Rights, duties and liabilities.

(§ II—35) — COMPENSATION — SPECIAL FEES.

In considering an account of a physician, the Court should be governed by the scientific position and of the reputation of the doctor, of the importance and duration of the treatment, of the financial position of the patient, of the gravity of the illness, of the distance of the patient's residence, of the previous relations between the doctor and his patient or his family, of the number and length of the visits and whether they were made in the day time or during the night. It is the custom that all applications of special instruments and all operations, even those of minor surgery, give a right to higher fees. There should also be allowed a fee to the regular physician of the patient for assistance at consultations. But a physician cannot include in his account fees for "daily attendance" on the ground that he was all the day at the disposition of the patient without proving that this was necessary and that he had notified the patient of it.

Chevalier v. Girard, 48 Que. S.C. 211.

PLACE.

Place of trial, see Venue; Removal of Causes; Courts.

[illegible]

SECRET

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SECRET

IN CHARGE
 Secretary
 Treasurer
 Board of Directors

Mortgage 2.00
Damages 1.00
Total of 3.00

RECEIVED - 1964
JAN 14 1964
U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

[REDACTED]

100

3

ated
ed
ed
ety
on.
62,

1, 8

、 DAB-

Act,
v. in a
reclaim
number of
to have
led, and
ed if it
such a
compen-
Munipeg v.
lan. L.R.
nt in the
ng another
in, a large
ed since the
t they could
new claim in
statement of
circumstances
vance of the
tlict upon the
ch they could
e they might
e to the extent
under Toke v.
28, and Renton
o., [1900] 2 Q.B.
ce a new action,

PLAINTIFF.

Parties plaintiff, see Parties.

PLANS AND PLATS.

Of highways, see Highways; Dedication.

In expropriation, see Eminent Domain.

In construction of railways, see Railways;
Street Railways.

PLATFORM.

Injury to passenger riding on, see Carriers; Street Railways.

Injury to servant by fall of, see Master and Servant.

PLEADING.**I. IN GENERAL.**

- A. Generally; necessity; form.
- B. Verification.
- C. Definiteness; particularity.
- D. Inconsistency; repugnancy.
- E. Implication.
- F. Conclusions.
- G. Defects waived or cured; time for objections.
- H. Exhibits; proferret; oyer.
- I. Particulars.
- J. Pleading laws and ordinances.
- K. Judgment on pleading.
- L. Relief under pleading.
- M. Admissions.
- N. Amendments of pleading.
- O. Supplemental pleading.
- P. Filing after default; time.
- Q. Surplusage.
- R. Withdrawal.
- S. Striking out.
- T. Dismissal.
- U. Misjoinder; multifariousness.
- V. Duplicity.

II. DECLARATION OR COMPLAINT.

- A. Jurisdictional averments.
- B. Right or capacity to sue.
- C. Description of parties.
- D. Statement of cause generally.
- E. Negation of defence.
- F. Prayer; allegations as to damages.
- G. Averments as to ownership, title or possession.
- H. On contract liability.
- I. Allegations as to liens.
- J. For negligence.
- K. For libel or slander.
- L. For torts, injuries or nuisance.
- M. For infringement.
- N. Estates of decedents; wills; trusts.
- O. As to corporate matters.
- P. Miscellaneous.

III. PLEAS AND ANSWERS.

- A. In general.
- B. What must be pleaded.
- C. What may be pleaded.
- D. Sufficiency.

IV. CROSS-BILL.**V. REPLY.****VI. SET-OFF; COUNTERCLAIM; RECOUPMENT.****VII. DEMURRER.**

- A. Form.
- B. When lies.
- C. What demurrable.
- D. What questions raised by demurrer.
- E. What admitted by demurrer.
- F. Effect; practice.

Joinder of causes of action, see Action.

In criminal prosecution, see Criminal Law; Indictment; Summary Convictions.

Admissibility of evidence under, see Evidence.

Service of, see Writs and Process.

Annotations.

Objection that no cause of action shewn; defence in lieu of demurrer: 16 D.L.R. 517.

Statement of defence; specific denials and traverses: 10 D.L.R. 503.

Enemy alienage, how pleaded: 23 D.L.R. 375, 382.

I. In general.**A. GENERALLY; NECESSITY; FORM.**

(§ I A—7)—ACTION BEGUN BY WRIT OF SUMMONS SPECIALLY ENDORSED—AFFIDAVIT OF MERITS MADE BY DEFENDANT — NEW CLAIM ADDED BY AMENDMENT OF ENDORSEMENT—NECESSITY FOR NEW AFFIDAVIT OF MERITS—RULES 56, 127, 128.
Farah v. Lawless, 7 O.W.N. 725.

G. DEFECTS WAIVED OR CURED; TIME FOR OBJECTIONS.**(§ I G—58)—EXTENDING TIME FOR INDORSEMENT OF WRIT—TIME OF OBJECTION.**

A writ cannot be deemed to be specially indorsed and need not be amended, because it is not intitled "statement of claim," nor signed by counsel, and omitting the words "delivered, etc.;" and an objection to an undue extension of an indorsement upon the writ should be raised by motion before the delivery of the defence.

Page v. Page, 25 D.L.R. 99, 9 W.W.R. 442, 32 W.L.R. 854.

H. EXHIBITS; PROFERRET; OYER.**(§ I H—60) — PROMISSORY NOTE — TENDER AND DEPOSIT WITH REPLY.**

Although it may be irregular to only tender and deposit with the reply to a defence note which should have accompanied the declaration, the Court will permit them to be so tendered and deposited when the interest of justice demands it in the particular circumstances in which the parties are placed.

Finlay v. Boileau, 48 Que. S.C. 444.

I. PARTICULARS.**(§ I I—65)—CONTRIBUTORY NEGLIGENCE.**

An order for particulars of contributory negligence should not be granted unless the party applying satisfies the Court that he is likely to be taken by surprise by some

accusation or evidence which may be brought against him and which he cannot be prepared to meet unless he is told of it beforehand. [School Section v. Thomas, 23 N.S.R. 210, and Toppin v. Belfast, [1909] 2 Irish R. 181, referred to.]

Gillingham v. Lewis, 21 D.L.R. 470, 48 N.S.R. 233.

(§ I I—65)—OVER-PAYMENTS—FRAUD.

In an action by a provincial government for the recovery of over-payments under contracts for the construction of a new Parliament building, also charging fraud and conspiracy, the defendant is entitled to particulars of the amounts claimed to be over-paid, and of the fraudulent representations charged, particularly where they are not within the defendant's knowledge and there is nothing to shew that the plaintiff cannot set out what they are. [Sims v. Slater, 10 C.L.T. 227; Whyte v. Ahrens, 26 Ch. D. 717; Leitch v. Abbott, 31 Ch. Div. 374; Sachs v. Speilman, 37 Ch. D. 295, applied.]

Attorney-General v. Kelly, 24 D.L.R. 297, 25 Man. L.R. 621, 9 W.W.R. 83, 32 W.L.R. 327.

(§ I I—65)—CONDITIONS OF ORDER.

The judgment ordering particulars to be given should not provide that on default to give them the allegations of the action will be struck out.

Lessard v. Simard, 24 Que. K.B. 481.

(§ I I—65)—ACTION FOR SEDUCTION UNDER PROMISE OF MARRIAGE—DEMAND FOR PARTICULARS.

Clark v. Treloar, 25 D.L.R. 865, 9 W.W.R. 836.

N. AMENDMENTS OF PLEADING.

(§ I N—110)—AMENDMENT FOR PURPOSE OF JURISDICTION—TRANSFER OF CAUSE.

If a declinatory exception is filed asking that the record be sent to the Court of the place where the contract was made, where the defendant has his domicile, and where the action was served on him, the plaintiff cannot by an amendment prevent the operation of this declinatory exception. If a motion to amend is made by the plaintiff for the purpose of giving jurisdiction to the Court of the district in which the action was irregularly brought, this Court must first take cognizance of the declinatory exception, and, if it is granted, the Court will have no longer jurisdiction to adjudicate upon a motion to amend. [See Stewart v. Jubb, 47 Que. S.C. 366.]

Trudeau v. Beaudet, 47 Que. S.C. 401.

(§ I N—111)—ADDING ALLEGATION AS TO EXPENDITURES UPON MORTGAGED PREMISES.

An absolutely distinct and different cause of action from that set up in the original claim cannot be set up in an amended claim without leave of the Court. A mortgagee in possession, who has asked for foreclosure in his original claim may allege by amendment an expenditure of money upon permanent improvements to the mortgaged

property. [Robertson v. Wilson, 8 W.W.R. 1068, referred to.]

Baudistel v. Sinton & Leitch, 9 W.W.R. 291:

(§ I N—111)—AMENDMENT OF OPPOSITION TO SEIZURE.

An opposition for withdrawal from seizure like any other legal proceeding, may be amended, but the amendment itself should be made under oath.

Goulet v. Gratton, 47 Que. S.C. 465.

(§ I N—111)—STATEMENT OF CLAIM—AMENDMENT—PREJUDICE—REFUSAL OF MOTION IN CHAMBERS—LEAVE TO RENEW AT TRIAL.

Delap v. C.P.R. Co., 8 O.W.N. 293.

(§ I N—112)—NEW CAUSE—EFFECT ON COLLATERAL PROCEEDINGS.

A right arising since the commencement of the action may by leave of Court, be set up by way of amendment of the statement of claim, particularly where it makes it necessary to continue interim or collateral proceedings, such as the continuance of an injunction growing out of the action.

Robertson v. Wilson, 24 D.L.R. 274, 8 W.W.R. 1068, 31 W.L.R. 708.

(§ I N—112)—NEW CAUSE—CHANGE OF STATUS OF SURETY.

A statement of claim in an action to set aside a fraudulent conveyance commenced by a principal and surety may be amended as shewing the change of status of the surety after the commencement of the action. [Stone v. Theatre Am. Co., 14 D.L.R. 62, applied.]

Robertson v. Wilson, 24 D.L.R. 274, 8 W.W.R. 1068, 31 W.L.R. 708.

(§ I N—112)—OF COUNTERCLAIM—PUIS D'ARREIN CONTINUANCE.

Under r. 338 of the King's Bench Act, R.S.M. 1902, ch. 40, a defendant may, in a proper case, be allowed his counterclaim previously filed by setting up a number of causes of action for damages alleged to have arisen since the counterclaim was filed, and such amendment should be allowed if it would not put the plaintiff in such a position that he could not be compensated in costs or otherwise: Winnipeg v. Winnipeg Electric R. Co., 19 Man. L.R. 279. The plaintiffs had judgment in the action for \$3,600, with leave to bring another action for the balance of their claim, a large portion of which had only accrued since the commencement of the action, and they could not, therefore, introduce their new claim in this action by amending their statement of claim. Held, that these circumstances were not such that the allowance of the amendment asked for would inflict upon the plaintiffs an injustice for which they could not be compensated, because they might either counterclaim, at least to the extent of a full set off to the latter, under Toke v. Andrews (1882), 8 Q.B.D. 428, and Renton Gibbs & Co. v. Neville & Co., [1900] 2 Q.B. 181, or they might commence a new action,

and then move to consolidate the two actions or have them tried together, or for such other relief as would prevent the defendants from enforcing any judgment for damages in their action pending the result of the new action if diligently prosecuted.

Snyder v. Minnedosa Power Co., 23 Man. L.R. 750, 5 W.W.R. 151.

(§ I N-116)—CHANGING GROUNDS AFTER JOINDER OF ISSUE.

A party cannot be permitted to change, in joining issue, the grounds of his claim or defence after the action has been served and the plea has been filed.

Bacon v. Providence, Wash., Ins. Co., 47 Que. S.C. 71.

(§ I N-119)—TO JOIN ASSIGNEES IN FORECLOSURE ACTION.

The non-joinder of an assignee of a purchaser as a party defendant to an action for foreclosure of the contract may be cured by amendment. [King v. Wilson, 11 B.C.R. 109, applied.]

Gale v. Powley, 24 D.L.R. 450, 8 W.W.R. 1312, 32 W.L.R. 65.

P. FILING AFTER DEFAULT; TIME.

(§ I P-130)—STATEMENT OF CLAIM — FILING TIME.

The Court has a discretion to permit a statement of claim to stand where the Statute of Limitations has not intervened, although the statement of claim was delivered too late under the Ont. C.R. 1913, and notwithstanding that this was deliberately done for the purpose of avoiding a trial at the first available assize.

Schuch v. Meldrum, 22 D.L.R. 741, 7 O.W.N. 690.

Q. SURPLUSAGE.

(§ I Q-135)—PROLIXITY—EMBARRASSMENT.

A pleading which is merely prolix, even where it sets out verbatim documents pleaded, is not embarrassing, and the matter of prolixity is one for the taxing officer. [Theo Noel Company v. Vitae Ore Company, 7 W.L.R. 353; Sack v. Construction Company, 7 W.L.R. 653, applied.]

Grayson v. Consolidated Land, etc., Co., 31 W.L.R. 763.

S. STRIKING OUT.

(§ I S-145)—APPLICATION TO STRIKE OUT DEFENCE—DELAY.

In an action of debt the plaintiff, after notice of trial served, but before the date of trial arrived, moved to strike out the whole of the defence under r. 223, on the ground that the allegations therein were false, frivolous and vexatious. Held, that the delay was not a bar, inasmuch as no prejudice to the defendant was shewn by such delay. Held, also, that as the paragraphs struck out constituted the whole defence, it was proper to order judgment to be entered in favour of the plaintiff in default of amendment.

McDonald v. Maurice, 8 S.L.R. 254, 9 W.W.R. 680.

(§ I S-145)—STATEMENT OF CLAIM—MOTION TO STRIKE OUT—FURTHER CONSIDERATION—PRACTICE.

Chalmers v. City of Toronto, 7 O.W.N. 827.

(§ I S-145)—STATEMENT OF CLAIM—MOTION TO STRIKE OUT, AS DISCLOSING NO REASONABLE CAUSE OF ACTION AND FOR MISJOINDER OF PARTIES—REFUSAL TO TRY LEGAL ISSUES SEPARATELY — DISMISSAL OF MOTION—LEAVE TO RENEW AT TRIAL—COSTS.

Rankin v. Vokes, 8 O.W.N. 34.

(§ I S-145)—STATEMENT OF CLAIM—MOTION TO STRIKE OUT AS DISCLOSING NO REASONABLE CAUSE OF ACTION—RULE 121—EXCISION OF PORTIONS OF PLEADINGS — DECLARATORY JUDGMENT — JUDICATURE ACT, SEC. 16 (b)—ACTION AGAINST ADMINISTRATRIX FOR DISTRIBUTIVE SHARE OF ESTATE—TIME FOR BRINGING—DEVOLUTION OF ESTATES ACT, SEC. 32—JURISDICTION OF SURREGATE COURT—SURREGATE COURTS ACT, SEC. 71 (3).

Oke v. Oke, 8 O.W.N. 180.

(§ I S-146)—VEXATIOUS ACTION—BUILDING CONTRACT PREVIOUSLY LITIGATED.

A statement of claim will be regarded as vexatious, and will be struck out, if its purpose is an attempt to obtain a further interpretation and reformation of a building agreement which was already dealt with in a previous action, and the action stayed upon a reference to arbitration under the terms of the agreement, to ascertain the amount recoverable thereunder. [Gunn v. Hudsons Bay Co., 18 D.L.R. 420, referred to.]

Gunn v. Hudsons Bay Co., 25 D.L.R. 173, 25 Man. L.R. 663, 9 W.W.R. 216, 32 W.L.R. 478.

II. Declaration or complaint.

D. STATEMENT OF CAUSE GENERALLY.

(§ II D-185)—STATEMENT OF CLAIM—TRADE NAME — DECEPTION — DAMAGES — AMOUNTS CLAIMED—RULE 145—AMENDMENT—PARTICULARS.

Washington & Johnson v. Raper, etc., Burial Co., 8 O.W.N. 523.

G. AVERMENTS AS TO OWNERSHIP, TITLE OR POSSESSION.

(§ II G-210)—ACTION FOR PURCHASE PRICE—SALE OF LAND.

Possession of title by a vendor suing for the balance of the purchase money of land upon an open contract, and his readiness to convey are something more than conditions precedent within the meaning of r. 154 (Sask.); they are material facts which go to the root of the action and must be pleaded in order to entitle the vendor to a judgment.

[Mayberry v. Williams, 3 S.L.R. 350; Yates v. Gardiner, 20 L.J. Ex. 327, applied.]

Landes v. Kusch, 24 D.L.R. 136, 8 S.L.R. 32, 7 W.W.R. 1076, 30 W.L.R. 444, reversing 19 D.L.R. 520, 7 S.L.R. 83, 6 W.W.R. 1309.

[Applied in Standard Trust Co. v. Little, 24 D.L.R. 713, referred to in Tucker v. Jones, 25 D.L.R. 278.]

H. ON CONTRACT LIABILITY.

(§ II H—215)—ACTION BY BANK UPON MORTGAGE—ADDITIONAL SECURITY—MODE OF PLEADING.

In an action by a bank upon a mortgage upon real estate it is not necessary to allege in the statement of claim facts shewing that the mortgage was taken by way of additional security to a pre-existent debt. Where the right claimed or the defence raised existed at common law and the subsequent statute has not affected its validity, but merely introduced regulations as to the mode of its existence or performance, the statute does not affect the form of pleading. It is sufficient to allege whatever was sufficient before the statute: Odgers on Pleading, 7th ed., 99.

Canadian Bank of Commerce v. Perkins, 33 W.L.R. 78.

(§ II H—219)—DEMAND NOTES—DEED ABSOLUTE AS SECURITY—UNCONDITIONAL LEAVE TO DEFEND.

The fact that the lender suing upon demand notes had taken a deed absolute in form as security for the payment of the debt will support an order giving unconditional leave to defend so that defendant's rights in respect of the mortgage may be tried out in the one action where his affidavit sets up a contemporaneous oral agreement that he should have a period of time not yet expired within which to make payment. [Jacobs v. Booth's Distillery Co., 85 L.T. 262, referred to.]

Auld v. Taylor, 21 D.L.R. 577, 21 B.C.R. 192, 8 W.W.R. 552.

(§ II H—222)—STATEMENT OF CLAIM—SUFFICIENCY OF ALLEGATIONS—ASSIGNMENT OF INTEREST IN LAND.

Ormiston v. Ullerich, 25 D.L.R. 816, 32 W.L.R. 314.

K. FOR LIBEL OR SLANDER.

(§ II K—246)—PARTICULARS—DELIVERY OF—RELEVANCY—VAGUE OR EMBARRASSING—STRIKING OUT.

Augustine Automatic Rotary Engine v. "Saturday Night," 21 D.L.R. 870, 34 O.L.R. 166, 8 O.W.N. 508.

III. Pleas and answers.

A. IN GENERAL.

(§ III A—300)—ACTION FOR AGENT'S NEGLIGENCE—DEFENCE.

It is no answer to an action by the principal against his agent for breach of contract resulting from the agent's wrongful disposal

of a document of title to goods and the resulting delivery of the goods by the carrier before the price had been paid to such principal who was the seller and consignee, for the agent to set up that the property in the goods had not passed to the person who had wrongfully obtained possession.

Wolsely Tool & Motor Car Co. v. Jackson Potts & Co., 21 D.L.R. 610, 33 O.L.R. 96, 7 O.W.N. 617.

[Affirmed in 33 O.L.R. 587.]

(§ III A—300)—LEAVE TO SERVE—NOTICE.

An application for an order to serve a statement of defence under r. 56 (Ont.) should be made on notice and not ex parte. [Joss v. Fairgrieve, 32 O.L.R. 117, followed.]

Davis Acetylene Gas Co. v. Morrison, 23 D.L.R. 871, 34 O.L.R. 155, 8 O.W.N. 474.

(§ III A—300)—LIBEL—PLEA OF JUSTIFICATION.

The pleadings in an action for libel must define the issue which is being tried. The defendant upon a plea of justification is limited to proving the truth of his assertion, and ought not to be allowed, to the prejudice of the plaintiff, to adduce evidence which may raise a totally different issue. Confusion will arise, and a mistrial may be caused, if evidence is admitted upon the theory that the pleadings do not bind the parties, because of the power to amend. A new trial was ordered.

Govenlock v. London Free Press Co., 35 O.L.R. 79.

(§ III A—300)—EXCEPTION TO THE FORM—JUDGMENT—PLEA TO THE MERITS.

Though the Judge who delivers the final judgment has jurisdiction to review the decision given upon an exception to the form, the latter is only provisional as between the parties, and the defendant can set up in his defence on the merits the same grounds already pleaded by the exception to the form which was dismissed. [Montreal Rolling Mills Co. v. De Sambor, 11 Que. P.R. 110, 16 R.L.N.S. 80.]

Graham v. Brodeur Co., 47 Que. S.C. 56.

(§ III A—300)—STATEMENT OF DEFENCE—CLAIM FOR CARRIAGE OF GOODS—DEFENCE BASED ON ALLEGED AGREEMENT FOR POSTPONEMENT OF PAYMENT—REASONABLE ANSWER TO PLAINTIFF'S CLAIM.

Canada Steamship Lines v. Steel Co., 7 O.W.N. 832.

(§ III A—300)—STATEMENT OF DEFENCE—RES JUDICATA.

Bradshaw v. Grossman, 8 O.W.N. 275.

(§ III A—303)—GENERAL DENIAL—FAILURE TO SPECIFY.

A general denial in one paragraph of all the allegations in a statement of claim, without specifically denying each allegation of fact as required by r. 213 (B.C.), is bad and must be disregarded. [Hogg v. Farrell, 6 B.C.R. 387, followed.]

Page v. Page, 25 D.L.R. 99, 9 W.W.R. 442, 32 W.L.R. 854.

B. WHAT MUST BE PLEADED.**(§ III B—305) — NEGLIGENCE — INEVITABLE ACCIDENT—PARTICULARS.**

In an action of negligence it is open to the defendant on the general issue to prove that the injury was due to inevitable accident without expressly pleading it; consequently the defendant who has pleaded inevitable accident should not be ordered to give preliminary particulars as to the nature of and the circumstances which led to such inevitable accident. [Rumbold v. London County Council, 25 Times L.R. 541, referred to.]

Gillingham v. Lewis, 21 D.L.R. 470, 48 N.S.R. 233.

(§ III B—305)—STATEMENT OF DEFENCE—ACTION FOR FALSE ARREST AND IMPRISONMENT — JUSTIFICATION — REASONABLE AND PROBABLE CAUSE—SETTING OUT FACTS.

Misite v. Toronto, Hamilton & Buffalo R. Co., 9 O.W.N. 107.

(§ III B—309) — ESTOPPEL — ASSIGNEE OF LAND AGREEMENT FAILING TO PLEAD.

Where an assignee of an agreement for sale has an acknowledgment of the debt under such agreement, and comes to trial with full knowledge of the fact that the purchaser intends to set up by way of equitable defence a claim against the assignee for defective construction of the building on the land comprised in the agreement, but fails to specially plead estoppel, the purchaser is entitled to set up a claim in connection with the construction of the building as against the assignee, in the same manner, and to the same extent, as the purchaser could against the original vendor if he were taking proceedings under the agreement.

British Pac. Trust Co. v. Baillie, 20 B.C.R. 199.

D. SUFFICIENCY.**(§ III D—325)—PETITION—AFFIDAVIT.**

Where a petition should be accompanied by an affidavit it is only as to those allegations which are not established by the record itself that the affidavit can be invoked.

James Bay & E.R. Co. v. Bernard, 23 D.L.R. 701, 24 Que. K.B. 6.

IV. Cross-bill.

(See previous Annual Digests.)

V. Reply.**(§ V—345)—REPLY—STATUTE OF FRAUDS—ACTION FOR POSSESSION OF LAND—EQUITABLE DEFENCE UNDER AGREEMENT FOR PURCHASE—JUDICATURE ACT, SEC. 16—RULE 155.**

Wingrove v. Wingrove, 7 O.W.N. 827, 8 O.W.N. 26.

(§ V—345)—REPLY—MOTION TO STRIKE OUT PARTS OF—QUESTIONS OF LAW AND FACT TO BE DISPOSED OF AT TRIAL—LEAVE TO RE-

JOIN—NOTICE OF TRIAL—MOTION TO STRIKE OUT AS IRREGULAR.
Bradshaw v. Grossman, 8 O.W.N. 522.

(§ V—352)—ACTION BY ASSIGNEE OF MORTGAGE—STRIKING OUT REPLY—LEAVE TO AMEND.

The plaintiff alleged that he was an assignee of a mortgage, and sued for the mortgage moneys. The defendant pleaded that no advance had in fact been made, to which plaintiff replied that the mortgage was really made by an agent for him. This part of the reply was struck out and leave given to amend.

Canadian Bank of Commerce v. Harvey, 9 W.W.R. 638, 33 W.L.R. 35.

VI. Set-off; counterclaim; recoupment.**(§ VI—355)—AFFIDAVIT OF DEFENCE—COUNTERCLAIM.**

Rule 56 (5) (Ont.) authorizes the granting of leave to deliver a statement of defence only when it sets up a further answer to the claim other than that contained in or provable under the affidavit, and does not include a counterclaim.

Davis Acetylene Gas Co. v. Morrison, 23 D.L.R. 871, 34 O.L.R. 155, 8 O.W.N. 474.

VII. Demurrer.

(See previous Annual Digests.)

PLEDGE.

Collateral security to banks, see Banks.
See also Bailment.

POLICE.

Arrest by, see Arrest; False Imprisonment.

In general, see Constables.

Municipal liability for acts of, see Municipal Corporations.

(§ I—2)—PENSION—BENEFIT SOCIETY OF POLICE FORCE—DISMISSAL OF MEMBER—INVESTIGATION WITHOUT NOTICE—RULES OF SOCIETY—FAILURE OF COMMITTEE TO COMPLY WITH—JUDGMENT—DECLARATION OF RIGHT TO PENSION AND ALLOWANCE.

Welsh v. Toronto Police Benefit Fund, 9 O.W.N. 2, 156.

POLICE MAGISTRATE.

Powers of a justice of the peace, see Justice of the Peace.

Summary convictions, summary trials, see Summary Convictions; Criminal Law.

Sufficiency of charge or information, see Criminal Law; Indictment and Information.

POSSESSION.

Adverse possession, see Adverse Possession.

Under chattel mortgage, see Chattel Mortgage.

Under bill of sale, see Bills of Sale.

POWERS.

Under wills generally, see Wills; Executors and Administrators.

Sale by mortgagee under power of sale, see Mortgage; Chattel Mortgage.

(§ II—5)—POWER OF ATTORNEY TO SELL OR ASSIGN—EXECUTION OF POWER.

A power of attorney to sell or assign a mortgage does not authorize the donee of the power to exercise that power in favour of himself.

Re Land Registry Act and Shaw, 24 D.L.R. 429, 8 W.W.R. 1270, 32 W.L.R. 85.

(§ II—7)—POWER OF ATTORNEY TO VOTE FOR CURATOR—MODE OF PROVING.

Powers of attorney sous seing privé from creditors of an insolvent authorizing an attorney to vote for them at the meeting of creditors to appoint the curator and the inspectors should be legally proved. The mandate to the attorney ad litem is presumed.

Cadrin v. Gauvreau, 48 Que. S.C. 122.

(§ II—7)—DISCRETION AS TO DISPOSITION OF PROPERTY — “DURING LIFE” — WIDOWHOOD.

A clause in a will that “my wife will have the right to give my property to one or several of her children in the same manner that she will hold it, and subject to the charges, stipulations and conditions that she will deem proper, provided she does it in a way that will be just to her children and for her living during her widowhood and not otherwise,” the widow has a right while she remains a widow, if she cannot fulfil her obligations, to make a donation inter vivos of the property of the succession in favour of one of the heirs, the donor reserving to herself the usufruct of this property during her life. The expression, “during her life,” contained in the deed of donation should be interpreted as meaning during her life while she remains a widow, as that was the condition contained in the will of the husband.

Labelle v. Labelle, 47 Que. S.C. 385.

PRACTICE.

In review, see Appeal; Certiorari.

Attachment of debt, see Garnishment.

As to costs, security for, see Costs.

Examination for discovery, production of documents, see Discovery.

As to criminal proceedings, see Criminal Law; Summary Convictions.

Insolvency, see Insolvency; Assignment for Creditors; Corporations and Companies, VI.

Interpleader, see Interpleader.

As to judgment, see Judgment; Execution.

Jury and jury notice, see Jury; Trial.

As to pleadings, see Pleadings.

Service of process, see Writs of Process.

Stay of proceedings, see Stay of Proceedings.

Stay of execution, see Execution.

Third party notice, see Parties.

At trials, see Trial; New Trial.

Winding-up, see Corporations and Companies, VI.

In mandatory proceedings, see Mandamus; Injunction.

PREFERENCES.

In dissolution and wind-up, see Corporations and Companies, VI.

As affecting conveyance, see Fraudulent Conveyances.

By insolvents generally, see Insolvency; Assignment for Creditors.

PRELIMINARY ENQUIRY.

See Criminal Law, II; Justice of the Peace.

PRELIMINARY INJUNCTION.

See Injunction.

PRESCRIPTION.

Title by, see Adverse Possession.

Prescriptive rights in waters, see Waters, II; Easements.

As period of limitations, see Limitation of Actions.

PRESENTATION.

Of note for payment, see Bills and Notes.

Of cheques, see Cheques; Banks.

PRESUMPTION.

For presumption and burden of proof generally, see Evidence, II.

PRINCIPAL AND AGENT.

I. THE RELATION; REVOCATION.

II. AGENT'S AUTHORITY; RIGHTS AND LIABILITIES OF PRINCIPAL.

A. In general.

B. Agent's purchase or sale on credit.

C. Agent's fraud or wrong.

D. Ratification.

III. RIGHTS AND LIABILITIES OF AGENT.

Agent of corporation, see Corporations and Companies.

As to brokers, see Brokers; Factors.

As to agents of insurance company, see Insurance, I.

Matters as to partnership, see Partnership.

Freight and ticket agents, see Carriers.

Annotations.

Holding out as ostensible agent; ratification and estoppel: 1 D.L.R. 149.

Signature to contract followed by words shewing the signing party to be an agent; Statute of Frauds: 2 D.L.R. 99.

Fraud of agent or employee; estoppel by conduct: 21 D.L.R. 13.

Effect of war on agency of alien enemy: 23 D.L.R. 375, 380.

I. The relation; revocation.

(§ I-2)—REVOCATION OF MANDATE—EXCLUSIVE AGENCY.

The principal can always revoke his mandate even during the time when the agent had the exclusive right to represent him; in this case the agent for commission has a right to an indemnity but not necessarily to the commission agreed upon between him and the principal. This revocation may be made in a mandate gratuitous or otherwise, and even in a case where it had been agreed in writing.

Cyr v. Lecours, 47 Que. S.C. 86.

(§ I-3)—DURATION OF AGENCY—HOW REVOKED—NOTICE.

A mandate in writing which provides: "I authorize you to sell the property . . . and appoint you my agents for the sale of the said property for a period of 30 days from this date . . . this authority to continue until after notice in writing to the contrary," should be interpreted not as coming to an end after the expiration of 30 days, but as continuing to exist until notice in writing to the contrary has been given by the principal.

Brunet v. Caron, 47 Que. S.C. 244.

II. Agent's authority; rights and liabilities of principal.

A. IN GENERAL.

(§ II A-5)—IN ELECTION CASES.

Agency in election cases differs from agency in ordinary business transactions inasmuch as, in the case of an election, the agent constituted by whatever acts are sufficient for the purpose, may bind his principal by acts which are not only outside the scope of any authority expressly given to him but which may be directly contrary to the expressed directions of the person whose agent he is held to be.

Rudyk v. Shandro, 21 D.L.R. 250, 7 W.W.R. 1082, 30 W.L.R. 428.

[Reversed in 21 D.L.R. 266, 8 A.L.R. 425.]

(§ II A-5)—GRATUITOUS SERVICE—LIABILITY OF PRINCIPAL.

One who renders a gratuitous service to another at his request is an agent, and if he suffers wrong caused by the execution of that which the principal asked him to do, the latter should indemnify him for it.

Martineau v. Ravary, 48 Que. S.C. 176.

(§ II A-6)—LAW CLERK—AUTHORITY TO PREPARE LEASE—PLEDGING CREDIT.

The express authority given one employed as a law clerk to prepare a lease on behalf of the principal does not import the ostensible authority of pledging the principal's credit with respect to materials and improvements on the leased premises.

Dutton Wall Lumber Co. v. Ferguson, 23 D.L.R. 100, 31 W.L.R. 812.

(§ II A-6)—AUTHORITY OF DEPARTMENTAL HEAD TO PURCHASE WITHOUT CONFIRMATION BY MANAGER.

The fact that the firm had permitted one of the heads of a department in a retail store business to make purchases from the wholesaler without confirmation of same by the manager is admissible in proof of the unqualified authority of the head of the department to buy goods for his department from such wholesaler without such confirmation, although it was customary in the trade to have departmental orders so confirmed.

Duncan & Buchanan v. Pryce Jones, 22 D.L.R. 45.

(§ II A-6a)—FALSE STATEMENTS BY SALES AGENT—AGREEMENT LIMITING PRINCIPAL'S LIABILITY.

A sales agent for a machinery manufacturer must be held to have authority to describe a gasoline engine to the prospective purchaser and to tell the latter what it is capable of doing, and if he falsely described it by stating that it would do something which it was not capable of doing, his principals are liable for his fraud, notwithstanding a stipulation in the signed agreement that no agreements, stipulations, conditions or warranties express or implied, verbal or otherwise, save those mentioned in writing therein, shall be binding on the principals. [*Russo-Chinese Bank v. Li Yau Sam*, [1910] A.C. 174, distinguished; *Pearson v. Dublin Corporation*, [1907] A.C. 351, applied.]

Ontario Wind Engine v. Bunn, 21 D.L.R. 420, 8 S.L.R. 58, 8 W.W.R. 450, 31 W.L.R. 20.

(§ II A-7a)—GENERAL OR SPECIAL AGENCY—AUTHORITY TO COLLECT—SCOPE.

An authority given by a vendor of land to a notary who drew up the contract of sale, to collect from the purchaser a cash payment due under the contract, is merely special, from which no general power to collect the other payments accruing on the same contract can be inferred, so as to charge the principal with payments thus made to such agent who fails to account for them to the principal. [*Willett v. Rose*, 31 W.L.R. 528, reversed.]

Willett v. Rose, 25 D.L.R. 258, 8 S.L.R. 421, 9 W.W.R. 634, 32 W.L.R. 948.

(§ II A-7a) — AUTHORITY TO COLLECT — SCOPE.

An authority given by a principal to an agent to receive money cannot be construed into an agreement to allow the payer of the money to deduct from the same money alleged to be due to him by way of commission. [*Todd v. Reid*, 4 B. & Ald. 210, and *Bartlett v. Pentland*, 10 B. & C. 760, followed.]

Wylie v. Jones, 9 W.W.R. 367, 32 W.L.R. 635.

(§ II A-7a)—AUTHORITY OF LOCAL MANAGER—SETTLEMENT OF ACCOUNTS.

The settlement of a disputed account for

a smaller amount by a local manager having the authority to do so is binding upon the principal, notwithstanding a regulation that "managers must obtain authority in writing from superintendent or home office before making discounts on any account."

Last West Lumber Co. v. Haddad, 25 D.L.R. 529, 8 S.L.R. 407, 9 W.W.R. 578, 33 W.L.R. 15.

(§ II A-8)—AUTHORITY TO SELL LAND—RE-PURCHASE AGREEMENT—AGENT CO-OWNER WITH PRINCIPAL—AGREEMENT NOT SIGNED BY AGENT—LIABILITY OF PRINCIPAL FOR REFUSAL TO REPURCHASE.

Clarke v. Latham, 25 D.L.R. 751, 9 W.W.R. 271, 32 W.L.R. 549.

B. AGENT'S PURCHASE OR SALE ON CREDIT.

(§ II B-16)—IMPLIED AUTHORITY OF AGENT IN CHARGE OF RANCH.

The defendant, who was a contractor carrying on large operations, owned a ranch where he kept horses and mules, when they were not required for the purposes of his business. The action was brought to recover \$2,200 the price of a stallion which had been purchased for the defendant by the man who had charge of the ranch for the defendant. Held, upon the evidence, that express authority to purchase was not made out, and that though ranching operations were important, they were only incidental to the main enterprise of the defendant, and therefore that there was no implied authority in the servant to pledge the credit of his master to such a large amount, and to bind the master to a purchase of such a special nature.

Stout v. Kenny, 30 W.L.R. 518.

(§ II B-16)—LIABILITY OF PRINCIPAL FOR GOODS PURCHASED BY AGENT.

A retail merchant who guarantees to a wholesale merchant the payment of merchandise sold to another merchant, and who afterwards purchases the business of the latter, leaving him in possession and as manager of the business, is liable for the price of goods sold and delivered to such agent in good faith.

Dubois v. Bailey, 47 Que. S.C. 349.

(§ II B-16)—CONTRACT FOR PURCHASE OF GOODS MADE BY SUPPOSED AGENT OF DEFENDANT—FAILURE OF PLAINTIFF TO PROVE AGENCY—RATIFICATION—HOLDING OUT—SECRET COMMISSION—FRAUD—STORAGE CHARGES—RECOVERY OF SMALL SUM—COSTS.

Stoney Point Canning Co. v. Barry, 8 O.W.N. 411.

C. AGENT'S FRAUD OR WRONG.

(§ II C-20)—AGENT CO-PURCHASER—FAILURE TO DISCLOSE AGENCY AS FRAUD.

An agent having entered into an agreement with a vendor to find a purchaser for his property at a certain price, and on a commission basis, and subsequently entering into a contract with another for the co-purchase of the property with him, is guilty of fraud if he

conceals from his co-purchaser the fact that he is to receive such commission.

Hitchcock v. Sykes, 23 D.L.R. 518, 49 Can. S.C.R. 403, affirming 13 D.L.R. 548, 29 O.L.R. 6.

(§ II C-20)—ASSURANCE BY REAL ESTATE BROKER—WHEN NOT FRAUD.

A sale of land by a real estate broker on behalf of the owner who placed it for listing, without any formal contract of sale having been entered into between the purchaser and the owner, on assurance by the broker that the owner will abide by the sale, does not constitute a fraud on his part so as to render him liable, upon the failure of the owner to convey, for the loss sustained by the purchaser in a subsequent sale of the land on the strength of the broker's assurance. [*Peacock v. Wilkinson*, 18 D.L.R. 418, 7 S.L.R. 259, affirmed.]

Peacock v. Wilkinson, 23 D.L.R. 197, 51 Can. S.C.R. 319, 8 W.W.R. 600.

(§ II C-20)—FRAUD OF AGENT—PURCHASE OF LAND FOR PRINCIPAL—RESPONSIBILITY OF VENDOR FOR FRAUD OF PURCHASER'S AGENT—EVIDENCE—SECRET COMMISSION—RESCISSIION.

Cooper v. Parsons Realty Co., 8 O.W.N. 487.

(§ II C-20)—MORTGAGE—PAYMENT BY MORTGAGOR TO SOLICITOR—FAILURE OF SOLICITOR TO PAY OVER TO MORTGAGEE—VALIDITY OF PAYMENT—AUTHORITY OF SOLICITOR—AGENCY—EVIDENCE—ONUS.

Bolton v. Tyndall, 9 O.W.N. 266.

D. RATIFICATION.

(§ II D-25)—AGENT'S SALE OF LAND CONTRARY TO INSTRUCTIONS—REPUDIATION—RIGHTS OF PURCHASER.

The property owner is not bound by the act of his real estate agent in selling subdivision lots at a lesser price than his instructions warranted where there has been no approval or ratification of such sale by the owner; the purchaser in such case who has paid purchase money to the agent may sue the latter for its return on the principal repudiating the agent's promise of sale, as money received under warranty of authority.

Messier v. Chenery, 22 D.L.R. 527.

III. Rights and liabilities of agent.

(§ III-30)—DISOBEDIENCE OF INSTRUCTIONS.

An agent who disobeys the instructions of his principal is liable to pay for any loss which in the ordinary course of things is the result of such disobedience.

Globe & Rutgers Fire Ins. Co. v. Wetmore & Co., 23 D.L.R. 33, 49 N.S.R. 55.

(§ III-32)—CONTRACTS—PERSONAL LIABILITY OF AGENT.

The question whether an agent who has made a contract on behalf of his principal is to be deemed to have contracted personally,

and if so, the extent of his liability on the contract, depend on the intention of the parties to be deduced from the nature and terms of the particular contract and the surrounding circumstances.

Dusseault v. Kopp, 23 D.L.R. 332, 8 S.L.R. 88.

(§ III—32)—DEPOSIT PAID BY PRINCIPAL TO AGENT ON NEGOTIATION FOR LEASE—PAYMENT OVER TO LESSOR—LEASE NOT EXECUTED—ACTION AGAINST AGENT FOR RETURN OF DEPOSIT—EVIDENCE.

Goodrich Co. v. Robins Ltd., 9 O.W.N. 71.

(§ III—33) — CUSTOMS BROKER — LIABILITY FOR NEGLIGENT HANDLING OF BILLS OF LADING.

A customs broker entrusted with an endorsed bill of lading solely for the purpose of clearing the goods through the customs is not justified in lending the bill of lading to the carrier to enable the latter to fix the freight charges, and is answerable in damages if the seller who has consigned the goods to himself loses them in consequence of the broker's wrongful or negligent act.

Wolsely Tool & Motor Car Co. v. Jackson Potts & Co., 21 D.L.R. 610, 33 O.L.R. 96, 7 O.W.N. 617.

[Affirmed in 33 O.L.R. 587.]

(§ III—33)—CUSTOMS BROKER—NEGLIGENT HANDLING OF BILLS OF LADING—MEASURE OF DAMAGES.

A customs broker who is entrusted by his client with a duplicate bill of lading endorsed in blank to facilitate the passing of customs is liable in damages to the client if, through the negligence of the broker's agent the bill of lading is improperly delivered either to the buyer of the goods or to the railway company at destination if as a result the buyer obtained delivery without paying for the goods which were under consignment to the seller; the damage in such case is the price plus the interest at 5% from the time of wrongful delivery to the date of entering judgment.

Wolsely Tool & Motor Car Co. v. Jackson Potts & Co., 21 D.L.R. 610, 33 O.L.R. 96, 7 O.W.N. 617.

[Affirmed in 33 O.L.R. 587.]

(§ III—36)—AGENT'S RIGHT TO COMPENSATION — ACCEPTED ORDERS — CANCELLATION.

An agreement by a manufacturing company to pay their agent a stipulated commission on all "accepted orders" obtained by him as soon as the orders are shipped, entitles the agent, upon obtaining an order, to recover his full commission on the whole order even though only part of the order had been shipped and the remainder had been countermanded by the purchaser. [Whyte v. National Paper Co., 17 D.L.R. 842, reversed.]

Whyte v. National Paper Co., 23 D.L.R. 180, 51 Can. S.C.R. 162.

(§ III—36)—COMMISSION ON SALE OF GOODS—REFERENCE.

Barr v. John Martin Paper Co., 31 W.L.R. 504.

(§ III—36)—AGENT'S COMMISSIONS ON SALES OF COMPANY SHARES—EVIDENCE—AGREEMENT—PERCENTAGE RATE—COMMISSIONS ON SALES IN AGENT'S TERRITORY—ACCOUNT—REFERENCE.

Harris v. Townsend, 7 O.W.N. 801.

(§ III—36)—SALE OF LAND ON UNAUTHORIZED TERMS—COMMISSIONS.

When a proprietor gives to a person, even if not a real estate agent, a writing by which he binds himself to pay to him \$1,500 if he sells his property for \$44,500 on certain conditions, and the latter in fact sells it for that price but at conditions a little different as to the rate of interest, but which is agreed upon between the vendor and the purchaser, the agent is entitled to his commission, not the one mentioned in the writing, but the commission settled by usage, viz., 2½%.

Baikie v. Latourelle, 24 Que. K.B. 171.

(§ III—36)—AGENCY TO PROCURE LOAN—ASSIGNABILITY—COMMISSIONS.

A mandate to procure a loan can be transferred to a third party, and the latter, if he finds a lender on the desired conditions, is entitled to his commission. The borrower must submit his titles from the time of a sheriff's sale to the lender for examination, the sale only determining a part of the rights and of the charges which are on the immovable, and if a loan does not take place on account of the refusal to do so, the agent who has found the loan at the request of the borrower has a right to a commission of 1% according to the recognized custom.

Hicks v. Lamarre, 47 Que. S.C. 335.

(§ III—36)—COMMISSION UPON SALE OF LAND—SET-OFF AGAINST ACTION BY PRINCIPAL.

Held, upon the facts, that vendors of land, who had instructed their agent for sale not to accept further instalment payments from defaulting purchasers, must pay the commission agreed upon with respect to the sale of such land. Held, also, that in an action by the vendors to recover moneys retained by the agent, the agent was entitled to set up the amount of his commission by way of set off.

Rothesay Park Co. v. Montgomery Bros., 8 W.W.R. 1177.

(§ III—36)—REAL ESTATE AGENT—COMMISSION.

Wood v. Mitchell, 33 W.L.R. 20.

(§ III—36)—COMMISSION ON SALE OF LAND—CONDITION NEVER CARRIED OUT—CONTINGENT AGREEMENT.

Piggott v. Jupp, 32 W.L.R. 696.

(§ III—36)—SALE OF LANDS—SHARE OF PROFITS—COMMISSION—COSTS.

Livingston v. Cummings, 8 O.W.N. 543.

(§ III—36)—AGENT'S COMMISSION ON SALE OF PROPERTY—EMPLOYMENT OF AGENT—DESCRIPTION OF PROPERTY—AMENDED DESCRIPTION—FAILURE TO SELL ACCORDING TO.

Rushworth v. Johnston, 9 O.W.N. 93.

PRINCIPAL AND SURETY.

I. SURETYSHIP; LIABILITIES OF SURETY.

A. In general.

B. Release or discharge.

II. RIGHTS AND REMEDIES OF SURETY.

As to guaranty, see Guaranty; Bonds.

Liability of endorser of bill or note, see Bills and Notes.

I. Suretyship; liabilities of surety.

A. IN GENERAL.

(§ I A—3)—WHEN JOINTLY LIABLE—JOINT SIGNING OF CONTRACT OF SALE.

A party who signs a contract for the sale of machinery as surety for but jointly with the purchaser thereby becomes a joint debtor and subjects himself to the stipulated liability for the prompt accrual of the whole contract price upon the failure to furnish notes and collateral security before the use of the machinery.

Maytag Co., Ltd., v. Kolb, 23 D.L.R. 221, 32 W.L.R. 3.

(§ I A—6)—FAILURE OF OTHERS TO SIGN—CONTRIBUTION—EXTENT OF LIABILITY.

Where a bank manager, when he takes the signature of a guarantor, knows that such guarantor intends that his liability shall be conditional on the signatures of the other proposed guarantors, such guarantor will not be bound in the event of those signatures not being procured. Where two or more persons join as sureties for a common principal but bind themselves in different amounts, in the event of the principal being in default they are liable to contribute to the satisfaction of the creditor's claim in proportion to the limits of their respective liabilities, and not in equal amounts. [Ellesmere Brewery Co. v. Cooper, [1896] 1 Q.B. 75, followed. (Per Davies, J.).]

Scandinavian v. Kneeland, 8 W.W.R. 61.

(§ I A—6)—CONDITIONAL GUARANTY—FAILURE OF OTHERS TO SIGN IT.

A guaranty, signed by a person conditionally upon its future signature by other persons, is not binding upon such first-mentioned person in default of the signatures of the other persons.

Robinson v. Ellis, 9 W.W.R. 934.

B. RELEASE OR DISCHARGE.

(§ I B—10)—RELEASE OF ONE NO RELEASE TO OTHERS—DOCUMENTS RESTRICTING LIABILITY—NOTICE.

Where two or more sureties contract severally, the creditor does not break the contract with one of them by releasing the other. The contract remaining entire, the

surety in order to escape liability must shew an existing right to contribution from his co-surety which has been taken away or onerously affected by his release. [Ward v. National Bank of New Zealand, 8 A.C. 755, followed.]:—Held, that on the facts the defendant had failed to prove that the bank or its officers had actual knowledge of the contents of certain documents alleged to restrict the liability of the defendant on the note sued upon. The necessity for actual notice in such a case discussed.

Merchants Bank v. Guthrie, 32 W.L.R. 484, 9 W.W.R. 295.

(§ I B—13)—LOSS OF DISTRESS AS DISCHARGE OF SURETY.

A surety for the payment of rent is not discharged because by an assignment of the lease the right of distress is lost. [Re Russell, 29 Ch.D. 254, followed.]

West v. Shun, 24 D.L.R. 813, 8 S.L.R. 243, 9 W.W.R. 644, 32 W.L.R. 961.

II. Rights and remedies of surety.

(§ II—15) — SHORTAGES — GOOD FAITH OF PRINCIPAL.

A surety is not entitled to recover from the principal for money paid out for shortages in pursuance of the terms of the bond not attributable to the principal's negligence, and where he otherwise faithfully performed his duties.

U.S. Fidelity & Guaranty Co. v. Weber, 24 D.L.R. 113, 32 W.L.R. 5.

(§ II—15)—NOTICE OF DEFAULT.

A surety is not entitled to notice of the principal debtor's default unless there is a contract to that effect express or implied.

Massey-Harris Co. v. Baptiste, 24 D.L.R. 753, 9 A.L.R. 71, 9 W.W.R. 149, 32 W.L.R. 435.

[Followed in 25 D.L.R. 519, 9 A.L.R. 97.]

(§ II—15)—INDEMNIFYING PURCHASER'S DEFAULTS—NOTICE OF DEFAULT.

The assignor of an agreement for the sale of land who covenants to indemnify the assignee for any default made by the purchaser is not discharged from liability under the covenant for want of notice of the default. [Massey Harris v. Baptiste, 24 D.L.R. 753, followed.]

Crown Life Ins. Co. v. Clarke, 25 D.L.R. 519, 9 A.L.R. 97, 9 W.W.R. 333, 32 W.L.R. 654.

PRIORITIES.

Between assignees, see Assignment; Assignment for Creditors.

In case of insolvency of corporation, see Corporations and Companies, VI.

Between mortgage and other claims, see Mortgage, II; Chattel Mortgage; Bills of Sale.

Under executions, see Executions; Levy and Seizure; Attachment; Garnishment; Interpleader.

PRIVATE INTERNATIONAL LAW.

See Conflict of Laws.

PRIVATE ROADS.

As easement, see Easements.
Crossing over railroad, see Railways.
As highways, see Highways.

PRIVILEGE.

Of witness, see Criminal Law; Witnesses.
In libel case, see Libel and Slander.
Of exemption from arrest, see Writ and Process; Arrest.

PRIZE CONTESTS.

See Gaming; Lottery.

PRIZE FIGHTING.**Annotations.**

Criminal law; sparring matches distinguished from prize fights: 12 D.L.R. 786.
Definition; Cr. Code (1906), secs. 105-108: 12 D.L.R. 786.

PROBABLE CAUSE.

As defence, want of, see Malicious Prosecution; False Imprisonment; Arrest.

PROBATE.

Jurisdiction as to probate matters, see Courts; Appeals from, see Appeals.
Of wills generally, see Wills, I.
As to executors, see Executors and Administrators.

PROCESS.

Abuse of, see Abuse of Process; Malicious Prosecution.
Service of, see Writ and Process.

PRO CONFESSO.

Judgment pro confesso, see Judgment, I.

PRODUCTION OF DOCUMENTS.

See Discovery and Inspection.
Documentary evidence, see Evidence.

PROFITS.

Damages for loss of, see Damages, III.
Accounting for, see Accounting.
Right to share in, as proof of partnership, accounting for, see Partnership.

PROHIBITION.

- I. POWER TO ISSUE.
- II. ADEQUACY OF OTHER REMEDIES.
- III. PERSONS TO OR AGAINST WHOM WRIT MAY BE GRANTED.
- IV. PROCEEDINGS THAT MAY BE FORBIDDEN.
- V. PROCEDURE.

I. Power to issue.

(§ I—2)—FOR DEFECT ON FACE OF PROCEEDINGS.
Where the defect of jurisdiction is clear

on the face of the proceedings of an inferior Court, the issue of a prohibition, though not of course, is of right and not discretionary. [Farquharson v. Morgan, [1894] 1 Q.B. 552, applied.]

Rex v. Jack, 25 D.L.R. 700, 24 Can. Cr. Cas. 385, 49 N.S.R. 328.

II. Adequacy of other remedies.

(§ II—5)—ALTERNATIVE REMEDY OF APPEAL.

It is not a bar to the granting of prohibition to a magistrate for exceeding his territorial jurisdiction that an alternative remedy of appeal was available to correct the absence or excess of jurisdiction. [Channel Coaling Co. v. Ross, [1907] 1 K.B. 145, referred to.]

Rex v. Jack, 25 D.L.R. 700, 24 Can. Cr. Cas. 385, 49 N.S.R. 328.

III. Persons to, or against whom, writ may be granted.

(See previous Annual Digests.)

IV. Proceedings that may be forbidden.

(§ IV—15)—PROCEEDINGS UNDER ILLEGITIMATE CHILDREN'S ACT—COUNTY COURT JUDGE.

Prohibition will not lie to restrain a County Court Judge from considering evidence given by a respondent in proceedings taken under the Illegitimate Children's Act unwillingly and after objections to his being compelled to testify.

Re Pall Sigurdson, 9 W.W.R. 940, 25 Can. Cr. Cas.

(§ IV—23)—TO SUPERINTENDENT OF PUBLIC INSTRUCTION—EXCESS OF POWERS—HEARING AND REPORT.

The Superintendent of Public Instruction, in obeying the orders of the Provincial Secretary which governs his department, acts in administrative matters only, and is not subject to a writ of prohibition. The report of the delegate of the Superintendent upon a hearing does not constitute the trial of a person mentioned in it, and the latter is not entitled to a writ of prohibition against the delegate restraining him from all proceedings, and especially in making a report to give his opinion, or his appreciation, or a decision upon the proof made before him. If in any respect the delegate exceeds his powers, the excess in jurisdiction should be invoked in limine or at least before the enquête is finished and the case taken under consideration. A writ of prohibition cannot issue against such delegate after he has made his report and has become functus officio.

Therrien v. Mercier, 24 Que. K.B. 352.

V. Procedure.

(See previous Annual Digests.)

PROMISSORY NOTES.

See Bills and Notes.

PROMOTERS.

Of companies, see Corporations and Companies.

PROOFS OF LOSS.

See Insurance.

PROPERTY.

Expropriation of, see Eminent Domain.
Measure of compensation for taking, see Damages.

PROSTITUTION.

House of, see Disorderly House.

PROTEST.

Of note, see Bills and Notes, IV.
Of cheque, see Cheques.

PROVOCATION.

Sufficient to reduce murder to manslaughter, see Homicide.
Justification for assault, see Assault and Battery.

PROXIMATE CAUSE.

Question for jury as to, correctness of instructions, see Trial.

Of death of insured, see Insurance.

Of accidents generally, see Negligence; Carriers; Shipping; Railways; Street Railways.

Of injury from defective highway, see Highways.

Of injury to employee, see Master and Servant.

Of death, see Death.

(§ I-1)—DISMISSAL OF ACTION WHEN CAUSE UNKNOWN.

When the cause of an accident is unknown and cannot be established, the action of the plaintiff should be dismissed.

Collin v. G.T.R. Co., 48 Que. S.C. 106.

(§ VII-110)—ANIMALS RUNNING AT LARGE CAUSING FRIGHT OF HORSES—INJURY TO PROPERTY—REMOTENESS.

The perilous alternative one is placed in while driving away animals running at large contrary to a by-law in consequence of which his horses became frightened, causing damage to his property, does not render such damage too remote to bar recovery.

Moon v. Stephens, 23 D.L.R. 223, 8 S.L.R. 218, 8 W.W.R. 1165, 31 W.L.R. 832.

(§ VII-110)—ALLOWING HORSE TO STAND UNHARNESSED—ESCAPE.

The defendant's act in allowing the horse to stand harnessed but unbridled in an open space was the proximate cause of the injury, and the action of the horse in rolling was not an independent intervening cause.

Gray v. Steeves, 42 N.B.R. 676.

PUBLICATION.

Of libel, what constitutes, see Libel and Slander.

Service of process by, see Writ and Process.

PUBLIC CHARITIES.

See Charities; Benevolent Societies.

PUBLIC CONTRACTS.

Municipal contracts, see Municipal Corporations, II.

Contract for public improvement, see Public Improvements.

In general, see Contracts, VII.

PUBLIC GROUNDS.

Right to enter public buildings, see Injunction, I.

PUBLIC HEALTH.

Abatement of nuisances against, see Nuisance.

PUBLIC IMPROVEMENTS.

Matters peculiar to drains and sewers, see Drains and Sewers; Municipal Corporations.

Improvements peculiar to highways, see Highways.

Assessment for, see Taxes.

(§ IV-65)—MUNICIPAL WORKS OF PERMANENT NATURE—EXPROPRIATION—DAMAGE TO ADJOINING OWNER.

Where a municipality has by law the right to construct works of a permanent nature and obtain from a watercourse the necessary power to light a town, and to acquire by expropriation, land necessary for the completion of the works, it has no right to pay a yearly indemnity based on the value of the crop for damages caused by inundation of the land of an adjoining owner, but must expropriate the land and pay the indemnity in advance.

City of Fraserville v. Berube, 23 D.L.R. 751, 24 Que. K.B. 108.

PUBLIC LANDS.**I. CANADA.**

A. In general.

B. Disposal through land department; entry; sale.

C. Patents.

II. OF THE PROVINCES.

As to mines, see Mines and Minerals.

I. Canada.**A. IN GENERAL.****(§ I A-1) — CONSTRUCTION OF CROWN GRANTS.**

Crown grants are to be construed most favourably for the King where a fair doubt exists as to the real meaning of the instrument.

The King v. Tweedie, 22 D.L.R. 498, 15 Can. Ex. 177.

[Reversed in 52 Can. S.C.R. 197.]

(§ I A—1)—INDIAN LANDS ON RESERVES—SURRENDER—DOMINION OR PROVINCIAL DOMAIN.

Indian lands are not possessed by the Crown in trust for the Indians who have surrendered them; they belong to it in full ownership as other public lands subject to distribution every year among the members of the tribe who have agreed to surrender them, the interest derived from the proceeds of their sale. [Church v. Fenton, 5 Can. S.C.R. 239, followed.] When a tribe of Indians has surrendered a reserve to the Crown, the beneficial interest of the tribe in the lands of this reserve enures to the provinces and not to the federal power. [Appealed to Supreme Court.]

Doherty v. Giroux, 24 Que. K.B. 433.

(§ I A—3)—GRANT OF BED OF NAVIGABLE RIVER—TITLE TO.

In a grant of part of the public domain from the Crown to a subject the bed of a navigable river will not pass unless an intention to convey the same is expressed in clear and unambiguous terms in the grant. [Atty.-Gen. B.C. v. Atty.-Gen. Can., 15 D.L.R. 308, [1914] A.C. 169; Atty.-Gen. Que. v. Scott, 34 Can. S.C.R. 615, and MacLaren v. Atty.-Gen. Que., [1914] A.C. 258, 15 D.L.R. 855, referred to.]

Leamy v. The King, 23 D.L.R. 249, 15 Can. Ex. 177.

B. DISPOSAL THROUGH LAND DEPARTMENT; ENTRY; SALE.

(§ I B—7)—LEASE OF CROWN LANDS—LIABILITY FOR DAMAGE CAUSED TO FIRST LESSEE.

One who leases land from the Crown, the property being already leased and occupied by another person, and who does work upon it, is liable for the damages caused to the first lessee. A clause in the first lease that the lessee abandons all recourse for damages against the Crown of any nature whatever, does not apply to the act of the Crown itself, which is bound to provide peaceable enjoyment for its lessee, and the second lessee has no greater right than his lessor himself had.

Bonhomme v. Montreal W. & P. Co., 48 Que. S.C. 486.

(§ I B—9)—PURCHASE FROM CROWN—PURCHASE MONEY UNPAID—ASSIGNEE OF PURCHASER—RIGHT TO SUE IN TRESPASS—EVIDENCE—ORDER-IN-COUNCIL—REMOVAL OF PINE TIMBER—DAMAGE TO LAND BY COVERING WITH REFUSE—ASSESSMENT OF DAMAGES BY JURY—NEW TRIAL.

Severt v. Plaunt, 9 O.W.N. 94.

(§ I B—10)—TRANSFER TO OTHERS, POSSESSION CONTINUED—RIGHTS.

Where a wharf had been built on land the title to which is vested in the Crown, and the party in possession had used the property for many years in connection with a mill on the property, and subsequently transferred it to others who also went into possession,

and continued to remain in possession, the parties so in possession have a good title against every one except the true owner, and cannot be dispossessed except by one shewing better title. [Asher v. Whitlock, (1865) L.R. 1 Q.B. 1; Perry v. Clissold, [1907] A.C. 73, referred to.]

Jones v. Sullivan, 23 D.L.R. 843, 43 N.B.R. 208.

C. PATENTS.

(§ I C—15)—ISSUE OF PATENT TO LIFE TENANT—ASSIGNMENT—RIGHTS OF HEIRS—LIMITATIONS.

Held, under the circumstances of the case, that C. received a quit claim of his mother's interest in Crown lands as a family representative acting as express trustee for the benefit of the heirs of his brother, a deceased pre-emptor; the patent to the lands having issued erroneously to his mother as supposed heir-at-law of the deceased pre-emptor, the heirs having acquired a statutory right to the property which the Crown could not take away. [Boulton v. Jeffrey, 1 Ont. E. & A. 111, distinguished; Henderson v. Westover, 1 E. & A. 465; Henderson v. Seymour, 9 U.C.R. 47, referred to.] In such a case the Statute of Limitations is inapplicable. [Dougall v. Lang, 5 Grant 292, referred to.]

Cook v. Cook, 8 W.W.R. 506.

II. Of the provinces.

(See previous Annual Digests.)

PUBLIC OFFICERS.

See Officers.

PUBLIC POLICY.

As affecting contracts, see Contracts, III.

PUBLIC SCHOOLS.

See Schools.

PUBLIC SERVICE CORPORATIONS.

Right to exercise eminent domain, see Eminent Domain.

As to control by public utilities commission, see Railway Commission.

See also Carriers; Railways; Street Railways; Telegraphs; Telephones.

PUBLIC TRIAL.

See Trial.

In criminal proceedings, see Criminal Law.

PUBLIC WATER SUPPLY.

See Waters; Municipal Corporations.

PUBLIC WORKS.

Contracts for, see Municipal Corporations, II; Public Improvements.

Building contracts for, see Contracts.

Works for general advantage of Canada, see Railways; Railway Commission.

Expropriation for, see Eminent Domain.

PUNISHMENT.

For contempt, see Contempt.
For crime, see Criminal Law.

PUPILS.

See Schools.

PURCHASE MONEY.

Payment of, for lands, see Vendor and Purchaser.

For goods, see Sale.
Generally, see Contract.

QUALIFICATIONS.

Of voters, of candidates, see Elections.
For office, see Officers.

QUALITY.

Implied warranty as to, see Sale, II.

QUANTITY.

Rights of purchaser in case of shortage, see Sale.

Of land sold, see Vendor and Purchaser.

QUANTUM.

See Damages.

QUANTUM MERUIT.

Right of real estate broker to recover on, see Brokers. Of agents generally, see Principal and Agent; Factors.

Recovery on generally, see Contracts, IV; Damages.

QUASHING.

For want of jurisdiction, see Appeal.
Of indictment, see Indictment, etc.
Of by-law, see Municipal Corporations.
Of convictions, see Summary Convictions; Criminal Law.
Setting aside verdict, see Trial.
Setting aside judgment, see Judgment.
Proceeding under liquor laws, see Intoxicating Liquors.

QUESTION FOR JURY.

See Trial.

QUIETING TITLE.

See Cloud on Title; Land Titles.

QUO WARRANTO.

I. NATURE OF PROCEEDING.

II. WHEN PROPER REMEDY.

- A. In general.
- B. To corporations.
- C. As to office.

III. WHO ENTITLED TO MAINTAIN; LEAVE.

IV. PROCEDURE; RELIEF.

I. Nature of proceeding.

(§ I-1)—PRIVATE RELATOR—AUTHORITY OF JUDGE AT CHAMBERS.

An information in the nature of a quo

warranto at the instance of a private relator is an "action" within the meaning of O. 52 of the Judicature Act, 1909, and a motion for a rule must be made to the Court on previous notice to the parties affected thereby, and not by an ex parte application for a rule nisi. A Judge at Chambers has no power to grant an order nisi for an information in the nature of a quo warranto.

Ex parte Murchie; Re Levesque, 42 N.B. R. 541.

II. When proper remedy.**C. AS TO OFFICE.**

(§ II C-30)—DISPOSSESSING MUNICIPAL OFFICERS — ALDERMEN — INSCRIPTION EN DROIT—EXCEPTION TO FORM.

The right to demand by "quo warranto" that an alderman or municipal councillor who usurps that position may be dispossessed of it is a right which pertains to every municipal elector, and it is not necessary that the municipal elector who demands this dispossession for want of electoral status should proceed in the ordinary way for contesting the municipal election. In any case this ground raised by inscription en droit should have been by exception to the form. It is not permissible to proceed by petition accompanying a writ of "quo warranto" in order to demand that an election be set aside and another person declared elected in the place and stead of one who is charged with usurping the position.

Latour v. Lefebvre, 47 Que. S.C. 261.

III. Who entitled to maintain; leave.**IV. Procedure; relief.**

(See previous Annual Digests.)

RACES.

As to gaming, see Gaming; Lottery.

RAILROADS.

See Railways; Street Railways.

RAILWAY BOARD.

See Railway Commission.

RAILWAY COMMISSION.

Powers as to rates, cars, stations, etc., see Carriers.

(§ I-2)—JURISDICTION OF PROVINCIAL BOARD — WORK FOR GENERAL ADVANTAGE OF CANADA—WHAT IS.

Section 306 of the Dominion Railway Act, 1888, which declares certain named railways to be "works for the general advantage of Canada," only applies to the particular railways enumerated in the section and their branch lines, but does not apply to an electric railway that only crosses one of the railways named therein; consequently such railway is not subject to the exclusive jurisdiction of the Dominion Parliament, but it remains subject to the authority of the

Legislature of the Province of Ontario by which it was incorporated, and to the orders of the provincial railway board.

Re Ross & Hamilton, Grimsby & Beamsville R. Co., 25 D.L.R. 613, 34 O.L.R. 599, 9 O.W.N. 158.

(§ I-2)—JURISDICTION—CONTRACT AND CIVIL RIGHTS—SEPARATION OF GRADES.

The board does not pass on matters of contract and civil rights between the parties concerned in the work of grade separation, but only directs by which party the work authorized or ordered shall be done, leaving it to that party to carry out the work properly and without undue expense, and without interference by the board except for the purpose of seeing that its order is properly carried out.

Vancouver v. V. V., E. R. & N. Co., 18 Can. Ry. Cas. 296.

(§ I-2)—JURISDICTION—CONTRACT BETWEEN SHIPPER AND PURCHASER.

The Board has no jurisdiction to deal with questions of contract between shippers and purchasers, and therefore the parties are not bound by any finding of the Board, except with regard to tolls.

Oliver-Serim Lumber Co. v. C. P. & E. & N.R. Cos., 17 Can. Ry. Cas. 324.

(§ I-2)—JURISDICTION AS TO COMPENSATION IN EXPROPRIATION.

The Board has no jurisdiction to decide whether the damages sustained by the property owners are recoverable under the appropriate sections of the Railway Act dealing with arbitrations, or by action. [*Re Medlar and Arnott and City of Toronto*, 4 Can. Ry. Cas. 13, followed.]

Canadian Northern Ont. R. Co. v. North Bay, 18 Can. Ry. Cas. 309.

(§ I-2)—JURISDICTION—CLEARANCES ON DOMINION RAILWAYS—STEAM OR ELECTRICITY.

The Board has jurisdiction over all clearances on Dominion railways, whether operated by steam or electricity. Under special circumstances a clearance, in the case of poles already erected of 7 feet 3 inches, was approved, upon the company undertaking to keep its employees off the side of the cars on that side of the track on which the poles are erected, the clearance for unerected poles to be 7 feet 6 inches.

Hydro-Electric Power Com. v. London & Port Stanley R. Co., 17 Can. Ry. Cas. 326.

(§ I-2)—JURISDICTION—EMINENT DOMAIN—LANDS OF PROVINCIAL RAILWAY—LOCATION PLAN.

To the extent necessary to give effect to the purpose of the Dominion incorporation, the Board has jurisdiction under the Railway Act to authorize the expropriation by a Dominion railway company of lands of a provincial railway company, either by an order approving location plan, under sec. 159, or in a proper case, by order, e.g., under sec. 178, in the same manner as lands of individuals.

Lachine, Jacques Cartier, &c., R. Co. v. Montreal Tramways, etc., 18 Can. Ry. Cas. 133.

(§ I-2)—POWERS OF—COMPELLING RIGHT OF WAY TO PUBLIC ACROSS RAILWAY—RAILWAY CROSSED BY HIGHWAY—OPENING—RIGHT OF WAY.

The Board will not invoke its compulsory powers to compel a railway company to supply a right-of-way across its own lands for a municipal highway to be used for highway purposes quite irrespective of railway purposes.

Town of Courtney v. Esquimalt & Nanaimo R. Co., 18 Can. Ry. Cas. 384.

(§ I-2)—JURISDICTION TO GRANT CROSSING—HIGHWAY CROSSED BY RAILWAY—PUBLIC INTEREST.

The Board, in granting permission under sec. 237 to a railway company to cross a highway against the protest of the municipality, must be satisfied that the crossing is in the public interest—e.g., that additional facilities are necessary—but it has no jurisdiction to require, as a condition of granting the crossing, the acquisition of additional lands.

Canadian Northern Quebec R. Co. v. City of Montreal, 18 Can. Ry. Cas. 389.

(§ I-2) — JURISDICTION — MUNICIPAL IMPROVEMENT—SEPARATION OF GRADES—DOMINION FRANCHISES.

The jurisdiction of the Board is confined in cases of separation of grades to the public interest in so far as Dominion franchises are concerned and the proper administration of them by Dominion railway companies. It is not the business of the Board to decide an issue of municipal expediency, whether or not municipalities should make certain improvements in cases where the whole cost will be on the municipality.

City of Winnipeg v. C.P.R. Co., 18 Can. Ry. Cas. 317.

(§ I-2)—JURISDICTION—RE-OPENING TELEPHONE PAY STATION—UNJUST DISCRIMINATION.

The powers conferred on the Board in regard to telephone companies are not necessarily identical with those conferred in respect of railway companies. The powers of the Board with regard to the former are defined and restricted by 7-8 Edw. VII. ch. 61, part 1, sec. 5. The Board has no jurisdiction to order the re-opening of a telephone pay station, although such an application may be justified under the provisions of the Act against unjust discrimination.

Stoney Point Village v. Bell Telephone Co., 18 Can. Ry. Cas. 319.

(§ I-5)—VALIDITY OF ORDERS—PUBLICATION.

Publication in the "Canada Gazette" is not a condition precedent to the operation of an order of the Railway Commission of Canada even as regards general orders affecting the public; sec. 31 of the Railway Act, Can., requires that judicial notice shall

be taken of an order published by the Railway Commission or by leave of the Commission, but in other cases the order may be proved by a certified copy under sec. 69 of the Railway Act. [R. v. C.N.R. Co., 18 Can. Cr. Cas. 170, followed.]

Underhill v. C.N.R. Co., 22 D.L.R. 279, 25 Man. L.R. 254, 18 Can. Ry. Cas. 313, 8 W.W.R. 271.

[Followed in McPhee v. Esquimalt & Nanaimo R. Co., 23 D.L.R. 561.]

RAILWAYS.

- I. FRANCHISES AND RIGHTS; LEASES; RAILROAD AID.
- II. CONSTRUCTION AND OPERATION.
 - A. In general; change of gauge or route.
 - B. Crossings.
 - C. Fences.
 - D. Operation.
- III. ACCIDENTS AT CROSSINGS.
- IV. CONTRIBUTORY NEGLIGENCE.
- V. DIVERSION OR OBSTRUCTION OF WATER.
- VI. INSOLVENCY AND SALE OF RAILWAY.

Condemning property for, see Eminent Domain.

Damages in condemnation cases, see Damages, III.

Liability for acts of servants, see Master and Servant.

As carriers, regulation of rates, etc., see Carriers.

Governmental control of, see Railway Commission.

Street railways, see Street Railways.

I. Franchise and rights; leases; railroad aid.

(§ I-3)—SALE OF RAILWAY—INTERPRETATION OF CONTRACT—BALANCE OF PURCHASE PRICE—SUBSIDIES.

A stipulation in a contract for the sale of a railway that the balance of the purchase price is to be paid from time to time to the extent of fifty per cent. in Government subsidies points to the payment of the balance out of subsidies paid in respect of the residue over and above fifty per cent., not to the payment of the entirety of fifty per cent. of the subsidies, as a condition precedent to a demand for payment of so much as has been paid and for an accounting thereof. [Judgment of Canada Supreme Court reversed; Irvine v. Hervey, 13 D.L.R. 868, 47 N.S.R. 310, affirmed.]

Eastern Trust Co. v. Mackenzie, Mann & Co., 22 D.L.R. 410, [1915] A.C. 750, 113 L.T. 346, 31 W.L.R. 248.

(§ I-7)—RAILWAY SUBSIDY—DUTY OF GOVERNMENT AS TO DISTRIBUTION—PENDING LITIGATION.

A Provincial Government empowered by statute with the distribution of funds under a railway subsidy contract is not justified in making payments thereon pending an action for the determination of the respective rights relative thereto and of which the

Government had full notice. [Judgment of Canada Supreme Court reversed; Irvine v. Hervey, 13 D.L.R. 868, 47 N.S.R. 310, affirmed.]

Eastern Trust Co. v. Mackenzie, Mann & Co., 22 D.L.R. 410, [1915] A.C. 750, 113 L.T. 346, 31 W.L.R. 248.

(§ I-7)—RAILWAY SUBSIDY—DISTRIBUTION BY CROWN—PRACTICE.

The proper course to be pursued by the Crown in a case where it is charged with the distribution of certain funds under a railway subsidy contract that is being litigated and a receiver appointed is either to apply to the Court for a construction of the contract, and to pay accordingly, or to pay the whole amount over to the receiver to be paid out under orders of Court. [Judgment of Canada Supreme Court reversed; Irvine v. Hervey, 13 D.L.R. 868, 47 N.S.R. 310, affirmed.]

Eastern Trust Co. v. Mackenzie, Mann & Co., 22 D.L.R. 410, [1915] A.C. 750, 113 L.T. 346, 31 W.L.R. 248.

(§ I-7)—RAILWAY BONDS—RIGHT TO RETAIN FROM PROCEEDS TO PAY CLAIMS.

All that part of sec. 18 of 4 Geo. V., ch. 10, "An Act providing further aid for the construction of a line of railway along the valley of the St. John River," which precedes the last eight lines, apply only to moneys obtained from the sale of bonds under the said Act, and the Provincial Treasurer is only required under sec. 18 of the said Act to retain out of such moneys in respect of indebtedness of the company authorized to construct and complete the railway, and the authority of the treasurer to retain does not extend to indebtedness of sub-contractors and others due or accruing due at the passing of the Act for which the company is not liable, notwithstanding that such indebtedness was for actual work of construction and for wages, materials and supplies that have gone into the construction.

St. John and Quebec R. Co. v. Hibbard Co., 43 N.B.R. 508.

II. Construction and operation.

A. IN GENERAL; CHANGE OF GAUGE OR ROUTE.

(§ II A-10)—CONSTRUCTION OF RAILWAY ALONG HIGHWAY—CONSENT OF MUNICIPALITY.

While it is true that the fee of highways is vested in the Crown in the right of the province for all material purposes, the occupancy of city streets by railway is a question in which the public right is entirely and adequately represented by the municipality, and the effect of sec. 235 of the Railway Act of Canada is to recognize the paramount interest of the municipality, and to require its consent as a condition precedent to the construction on the highway so far as all street railways or tramways are concerned. Even in the case of a railway which does not come within the proviso of sec. 235, and even

where an application is meritorious in the sense that a railway is required, that the district in question will undoubtedly be benefitted to a greater or less extent by its construction, and that the proposal is supported by the majority of the property owners, the objection of the municipality to any railroad being constructed upon the highway will be given effect to. The merits of the application discussed. Judgment was given by the Chief Commissioner.

Re Essex Terminal & Sandwich, 31 W.L.R. 514.

(§ II A—10)—OPERATION ON CITY STREETS—
CONSENT OF MUNICIPALITY.

The provisions of sec. 235 of the Railway Act (Can.), requiring the consent by by-law of the municipal authority of a city or incorporated town before any company can carry its lines upon the highway, only applies to a street railway or a railway operated as such.

Re London Railway Commission, 32 W.L.R. 224.

(§ II A—14)—EXPROPRIATION—SPURS AND
SIDINGS—JURISDICTION OF BOARD.

Spur lines constructed under the provisions of sec. 222 do not ipso facto become part of the railway of the company from whose line they are built under the provisions of an agreement providing that the railway company furnish the ties, rails and fastenings, which remain their property, and the owner provides the right-of-way. Such a siding cannot be extended to the land of another owner under an order of the Board, but the Board may, in the public interest, authorize the expropriation of the right-of-way upon which the siding is built and its extension to the lands of an adjoining owner requiring railway accommodation. [Blackwoods and Manitoba Brewing and Malting Co. v. C.N.R. Co. and City of Winnipeg, 44 Can. S.C.R. 92, 12 Can. Ry. Cas. 45; Clover Bar Coal Co. v. Humberstone, G.T.P. R. and Clover Bay Sand & Gravel Cos., 45 Can. S.C.R. 346, 13 Can. Ry. Cas. 162, distinguished.]

Boland v. G.T.R. Co., 21 D.L.R. 531, 18 Can. Ry. Cas. 60.

(§ II A—14)—REPAIR AND MAINTENANCE OF
SPURS—WHEN.

When a spur is constructed so that it becomes part of the railway company's property, the company should repair and maintain it, but where part of the right-of-way of the spur is upon the property of the railway company and part upon the applicant company's property, the railway company, in the absence of an agreement to the contrary, should maintain that part of the spur upon its own right-of-way and renew the rails (belonging to it) of the extension of the spur into the applicant company's property, but the applicant company should maintain and repair the understructure on its own lands.

Wolfeville Milling Co. v. Dominion Atlantic R. Co., 18 Can. Ry. Cas. 367.

B. CROSSINGS.

(§ II B—16)—DOMINION AND PROVINCIAL
RAILWAYS.

A provincial railway as distinguished from a Dominion or federal railway, which latter is subject to the Railway Act, Can., has a locus standi to make application to the Railway Commission (Can.) for permission to cross a Dominion railway.

Att'y-Gen'l for Alta. v. Att'y-Gen'l of Canada, 22 D.L.R. 501, [1915] A.C. 363, 112 L.T. 177.

(§ II B—17a)—TELEPHONE WIRE CROSSINGS
—LIABILITY FOR COST OF RAISING—SENIOR
AND JUNIOR RULE.

Where the wires of a telephone company crossing the line of a railway company, which is changing its system of operation from steam to electricity, require to be raised, the railway being senior in construction, the telephone company must bear the cost of raising its wires where the fee of the property crossed is in the railway company, but at highways where the only right of the railway company is to cross with its tracks, the telephone company is senior with its construction to the railway company's new overhead wires, and the latter must bear the cost of raising the telephone wires. [Hamilton Street R. Co. v. G.T.R. Co. (Kenilworth Avenue Crossing Case), 17 Can. Ry. Cas. 393, followed.]

London Railway Commission v. Bell Telephone Co., 18 Can. Ry. Cas. 435.

(§ II B—18)—HIGHWAY CROSSINGS—WHEAT
ARE—PRIVATE DRIVEWAY.

A private driveway across a railway used by the public as a means of access to an adjoining farm is not a highway crossing within the meaning of sec. 155 of the Ontario Railway Act, R.S.O. 1914, ch. 185, nor within the purview of sec. 259 of the Railway Act (Can.) 1888, respecting the fencing of and regulation of speed at crossings.

Gowland v. H. G. & B. Electric R. Co., 24 D.L.R. 49, 33 O.L.R. 372, 8 O.W.N. 152.

(§ II B—18)—HIGHWAY CROSSINGS—DAN-
GEROUS SUBWAY—LIABILITY FOR INJUR-
IES.

A railway company charged with the duty under the Railway Act (R.S.C. 1906, ch. 37, sec. 241) to maintain safe structures by which any highway is carried over or under any railway, will be liable for injuries resulting from the dangerous condition of a subway constructed by the railway company at the expense of a municipality.

Burrows v. G.T.R. Co., 23 D.L.R. 173, 18 Can. Ry. Cas. 183, 34 O.L.R. 142, 8 O.W.N. 459.

(§ II B—18)—HIGHWAY CROSSED BY RAILWAY
—RIGHTS OF ABUTTING OWNERS.

When an order has been made authorising the crossing of certain streets by a railway, upon condition that the railway company should enter into an agreement to indemnify the city against all claims for damages by

abutting land owners, the Board will not, after the execution of such agreement, order the railway company to carry out its terms.

City of Calgary v. C.N.R. Co., 21 D.L.R. 546, 18 Can. Ry. Cas. 25.

D. OPERATION.

(§ II D 1—30)—COAL COMPANIES—DEFECTIVE APPLIANCES.

A coal company which operates wholly on its own lands in connection with its mines a railway, and on it carries passengers and freight, may properly be found negligent in operating its cars with a "link and pin" coupling long after the general introduction of safer and better methods, although the company may not be subject to the Railway Act, R.S.C. 1906, ch. 37, sec. 264. [*Fralick v. G.T.R. Co.*, 43 Can. S.C.R. 494, 10 Can. Ry. Cas. 373; *Stone v. C.P.R. Co.*, 47 Can. S.C.R. 634, 13 D.L.R. 93, referred to.]

Cook v. Canadian Collieries, 21 D.L.R. 215, 21 B.C.R. 64, 8 W.W.R. 41, 30 W.L.R. 750.

(§ II D 1—30)—DUTY OF ENGINEER TO LOOK AND WARN—SPEED—JOINT OPERATION.

An engineer in charge of a locomotive is not obliged constantly to look forward to see if there is anyone or anything on the track, and he may occupy himself, while the train is in motion, in making repairs to his engine if he has given the warnings required by law at crossings and other places. Where there is no statutory regulation as to the speed of a railway train it cannot be taken into consideration to determine the cause of an accident. A railway company which grants to another company the right of running over its line and its joint operation is liable for the consequences of accidents which occur on it.

Collin v. G.T.R. Co., 48 Que. S.C. 106.

(§ II D 2—35)—NEGLIGENCE—UNCOVERED SWITCH RODS.

In the absence of any regulation by statutory authority requiring a railway company to cover the switch rods of a hand switch on the railway, it is not open to a jury to find that the failure to do so constitutes negligence. [*Zuvelt v. C.P.R. Co.*, 23 O.L.R. 602, referred to.]

Mallory v. Winnipeg Joint Terminals, 22 D.L.R. 448, 25 Man. L.R. 456, 18 Can. Ry. Cas. 277, 31 W.L.R. 473, 8 W.W.R. 853.

(§ II D 6—70)—ANIMALS AT LARGE—DEFECTIVE FENCE—STATUTORY DUTY TO REPAIR.

A railway company having been incorporated under Quebec Statute and never having been declared to exist for the general benefit of Canada, or to come under the provisions of the Dominion Statute, is only obliged to build and keep in repair such fences as were required for the protection of the animals belonging to the adjoining owner, or of those who were rightly occupying the adjoining land.

Dodier v. Que. Central R. Co., 23 D.L.R. 667, 47 Que. S.C. 186.

(§ II D 6—70)—HORSES AT LARGE THROUGH WILFUL ACT OF OWNER—WANT OF CATTLE GUARDS.

It is made an absolute ground of defence under sec. 294, sub-sec. 4, of the Railway Act, Can., to an action against the railway for value of stray horses killed on its right-of-way at a place which was not a crossing that the horses got at large through the wilful act or omission of the owner, such as turning the horses out to run at large without the authority of a municipal by-law, and such statutory defence is not displaced by shewing that the horses must have got upon the railway tracks at a railway crossing where the railway had neglected to maintain cattle guards as required by sec. 254 of the Railway Act (amendment of 1911, ch. 22). [*Sporle v. G.T.P.R. Co.*, 17 D.L.R. 367; *Clayton v. C.N.R. Co.*, 17 Man. L.R. 426, 435, applied; *Greenlaw v. C.N.R. Co.*, 12 D.L.R. 402, 15 Can. Ry. Cas. 329, 23 Man. L.R. 410, distinguished.]

Early v. C.N.R. Co., 21 D.L.R. 413, 8 S.L.R. 27, 8 W.W.R. 486, 30 W.L.R. 878.

(§ II D 6—72)—INJURY TO ANIMAL AT LARGE—FARM CROSSING—GATES.

An animal to be "at large," under the terms of the R.S. 1906, art. 294, must not be in its own pasture, but must be on a highway. Where a horse, being on its own pasture, escapes through a gate in the fence of a farm crossing, thus securing access to the line of a railway, and gets killed, in the absence of any evidence to shew that the gate was not in good order, or, in the absence of any evidence of any other fault on the part of the railway, the owner of the animal has no recourse against the company, as his horse was not "at large," and the law imposed upon him the duty to keep the gate closed.

De Soles v. C.P.R. Co., 48 Que. S.C. 158.

(§ II D 7—75)—FIRES—LACK OF SAFETY APPLIANCES.

The Railway Act, Can., sec. 298, places the onus on the railway company of shewing that modern and efficient appliances were used on the locomotive to prevent the sparks from same causing fires in property adjacent to the railway in order to claim the benefit of the limitation of \$5,000, which is made applicable by that section in that contingency if the company has not otherwise been guilty of negligence.

Dutton v. C.N.R. Co., 23 D.L.R. 43, 31 W.L.R. 367, 19 Can. Ry. Cas. 72.

(§ II D 7—75)—FIRES—COMBUSTIBLES ON RIGHT-OF-WAY.

Non-compliance with the requirements of sec. 297 of the Railway Act, Can., which requires the company to keep its right-of-way free from dead, dry grass and weeds and other unnecessary combustible matter is negligence on the part of the railway company. [*Blue v. Red Mountain R. Co.*, [1909] A.C. 361, 9 Can. Ry. Cas. 140, followed.]

Dutton v. C.N.R. Co., 23 D.L.R. 43, 31 W.L.R. 367, 19 Can. Ry. Cas. 72.

(§ II D 7-75) — FIRES — DESTRUCTION OF
TIMBER—CONTRIBUTORY NEGLIGENCE.

Where a timber license from the Department of the Interior stipulated that the licensee should dispose of the tree tops, branches and other debris, of the lumbering operations in accordance with the directions of the Department, so as to minimize the danger of fire, but it is not shewn that any directions were given by the Department in that respect, the failure of the lumberman, cutting timber by virtue of such license, to so dispose of the debris is not attributable to him as contributory negligence in an action against the railway company for the destruction of his logs by fire caused by sparks from the locomotive.

Dutton v. C.N.R. Co., 23 D.L.R. 43, 31 W.L.R. 367, 19 Can. Ry. Cas. 72.

(§ II D 7-75)—FIRES—LIMITATION OF ACTION—DUTIES UNDER PROVINCIAL STATUTE.

The Dominion Railway Act, R.S.C. 1906, ch. 37, sec. 306, prescribing a time limitation for actions for fires resulting from the construction and operation of railways, does not in any wise diminish or affect liabilities arising out of a breach of statutory duty under a provincial statute regulating the prevention of fires.

Greer v. C.P.R. Co., 23 D.L.R. 337, 51 Can. S.C.R. 338, 19 Can. Ry. Cas. 58, affirming 19 D.L.R. 140, 32 O.L.R. 104.

(§ II D 7-75)—FIRES—ORIGINATING CAUSE.

In the absence of evidence of any other probable source, evidence that three locomotives of a defendant railway company passed the spot where a fire originated about the time of the fire, is evidence from which a jury might not improbably infer that the fire was caused by sparks emitted from one of these locomotives.

Hearn v. Nelson, 8 W.W.R. 99.

(§ II D 7-75)—FIRES—PROOF OF CAUSES.

Held, on the facts, that the plaintiff had not proved that the fire which did the damage complained of was the same fire which it was found originated from a spark from one of the defendant's engines. [Clark v. Ward, 13 W.L.R. 83, followed.]

Margach v. Mackenzie & Mann, 32 W.L.R. 162.

(§ II D 7-75)—FIRE FROM LOCOMOTIVE ENGINE—DESTRUCTION OF PROPERTY—CONTROL OF ENGINE AT TIME OF ESCAPE OF FIRE—LIABILITY OF RAILWAY COMPANY FOR ACT OF SERVANT—SCOPE OF EMPLOYMENT—EVIDENCE—CORROBORATION—ONUS—FINDINGS OF JURY.

Conway v. Dennis Canadian Co., 8 O.W.N. 142.

III. Accidents at crossing.

(§ III-49)—PRIVATE DRIVEWAY—COLLISION WITH VEHICLE — EXCESSIVE SPEED — WARNINGS.

The operating of an electric car at an

excessive rate of speed and the failure to give proper warnings while approaching a private driveway crossing constitutes negligence at common law which renders the company answerable for injuries to a vehicular traveller resulting from a collision at the crossing. [G.T.R. Co. v. McKay, 34 Can. S.C.R. 81; Bell v. G.T.R. Co., 15 D.L.R. 874, 48 Can. S.C.R. 561, distinguished.]

Gowland v. H.G. & B. Electric R. Co., 24 D.L.R. 49, 33 O.L.R. 372, 8 O.W.N. 152.

(§ III-49)—PRIVATE CROSSINGS—DUTY OF PROTECTION.

A railway company which allows the public to travel in its cars at a place where the road is situated upon private property, owes the public there the same measure of protection as where the cars traverse the streets.

Noel v. Quebec R. L.H. & P. Co., 48 Que. S.C. 130.

(§ III-50)—SIGNALS AND WARNINGS—INCOMPETENT BRAKEMAN.

The statutory duty under sec. 276 of the Railway Act, Can., to warn persons crossing or about to cross the track of the approach of a train backing up across the street is one for the non-observance of which the railway company may be liable in damages for an accident resulting from the failure of the brakeman to give sufficient warning with the air whistle at the rear of the train; the placing in charge of the rear end of the train when moving reversely upon level crossings in a town of a brakeman unacquainted with the conditions existing near the crossing which would interfere with persons seeing the approaching train and without knowledge of where the crossing was, is in itself negligence for which the company is liable.

Mitchell v. G.T.R. Co., 22 D.L.R. 804, 18 Can. Ry. Cas. 188, 8 O.W.N. 78.

[Affirmed on appeal in 8 O.W.N. 300.]

(§ III-50)—INJURY TO PERSONS CROSSING TRACK BY PASSING TRAIN—NEGLIGENCE—FINDINGS OF JURY—FAILURE TO RING BELL AND BLOW WHISTLE—NEGLIGENCE NOT CONNECTED WITH INJURY—NEGLIGENCE OF PERSONS INJURED IN ATTEMPTING TO CROSS WITHOUT LOOKING.

Gray v. Wabash R. Co., 9 O.W.N. 102.

(§ III-51)—SIGNALS AND FLAGMEN—YARD TRAIN.

Section 251 of the Railway Act, Can., under which a man must be stationed on the last car to give warning of the train's approach when it is moving reversely in a city, town or village, applies to a work train operating on the surface wholly within the plant of a company subject to the Railway Act, situate in a city, town or village as well as to cases where the streets of the municipality are crossed by the train moving backwards. [McMullin v. N.S. Steel Co., 39 Can. S.C.R. 593, applied.]

Campbell v. Nova Scotia Steel & Coal Co., Ltd., 22 D.L.R. 885, 48 N.S.R. 540.

(§ III—55)—ENTERING BETWEEN GATES—
CONTRIBUTORY NEGLIGENCE—WANT OF
WARNINGS AND FLAGMEN.

Where the erection of gates at a level highway crossing is not authorized nor required by an order of the Board of Railway Commissioners, the lowering of the gates is but a warning to persons desiring to cross the tracks that it is dangerous to do so, and the entry of a person upon the portion of the highway between the gates, when the gates are down, is not as a matter of law or per se negligence, as disentitling him to recover damages for injuries sustained by him while upon that portion of the highway, by reason of the negligence and breach of duty of the railway company as to signals and warnings.

Garside v. G.T.R. Co., 23 D.L.R. 463, 33 O.L.R. 388, 8 O.W.N. 156, 18 Can. Ry. Cas. 272.

[Affirmed by Can. Sup. Ct., Dec. 29, 1915.]

(§ III—55)—WATCHMEN OF GATES MAINTAINED BY COMPANY AND MUNICIPALITY—
NEGLECT OF—LIABILITY OF MUNICIPALITY.

A highway crossing the tracks of two railway companies, the Dominion Board of Railway Commissioners made an order for the installation of gates to be operated by watchmen. One of the railway companies was directed to instal the gates, and the cost was divided between the municipality and the two companies in certain proportions. The cost of maintenance was divided the same way. An accident having been occasioned by the negligence of one of the watchmen appointed by the company having the conduct of the work, an application was made by the other company, whose engine caused the accident, to have the damage paid by the company appointing the watchman, or to provide as to division of responsibility for accidents due to the negligence of the watchman. Held, that the watchman should be regarded as the agent of the company, whose trains or engines do the damage, and the municipality should not be responsible for any damages caused by the negligence of the watchman.

Re Royce Ave. Crossing (Toronto), 32 W.L.R. 227.

IV. Contributory negligence.

(§ IV 2—98)—ACCIDENT AT CROSSING—RIDING WITH ANOTHER.

Contributory negligence of the person who had hired the vehicle and was himself driving it, is not attributable to the passenger who is riding with him in the vehicle and who has no control over same, in answer to the latter's action for damages against the railway, under the Fatal Accidents Act, Ont., where the passenger jumped from the vehicle when a collision seemed imminent and was killed and the accident was due to the company's neglect of its statutory duty under sec. 276 of the Railway Act, Can., to give warning of the approach of the train moving reversely over a level crossing.

Mitchell v. G.T.R. Co., 22 D.L.R. 804, 18 Can. Ry. Cas. 188, 8 O.W.N. 78.
[Affirmed on appeal in 8 O.W.N. 300.]

V. Diversion or obstruction of water.

(§ V—115)—DRAINAGE—ADJOINING LANDS—
DAMAGES.

The Railway Commission exercising the statutory power contained in sec. 250 (2) of the Railway Act, Can., to order a railway to construct a drain under its tracks for the benefit of an adjoining owner and to fix the terms and conditions, may order the work done by the railway at its own expense where the owner could have easily drained his land but for the railway intersecting the same; the statutory obligation so cast upon the railway will remain notwithstanding the land-owner's release in the conveyance of land for the right-of-way, of his claim for damages by reason of the exercise of the railway company's powers.

Denholm v. Guelph & Goderich R. Co., 22 D.L.R. 535.

(§ V—115)—FAILURE TO REPAIR DITCHES—
ACTION FOR DAMAGES—ORDER OF BOARD.

It is not necessary before bringing an action for damages against a railway company, for failure to keep its ditches in repair, to place the company en demeure to make the repair nor to obtain an order from the Board of Railway Commissioners to that effect.

Sénécal v. G.T.R. Co., 48 Que. S.C. 496.

VI. Insolvency and sale of railway.

(See previous Annual Digests.)

RATIFICATION.

Of broker's contract for sale of land, see Brokers.

Contract by infant, see Infants.

By master of act of servant, see Master and Servant.

Of agent's contract, see Principal and Agent.

REAL ESTATE AGENTS.

See Brokers, II.

Agents in general, see Principal and Agent.

REAL PROPERTY.

As to adverse possession of, see Adverse Possession.

Boundaries of land conveyed, see Boundaries.

Construction of contract for transfer of, see Contracts, II; Vendor and Purchaser.

Fraudulent conveyance of, see Fraudulent Conveyances.

Assignment of land contract, see Assignment.

Measure of damages on contract relating to, see Damages, III.

Expropriation of, see Eminent Domain.

Dedication of, see Dedication. See also Highways.

What passes by deed, see Deeds.
 As to dower, see Dower; Curtesy.
 Easement in, see Easements.
 Ejectment to obtain possession of, see Ejectment.
 Estoppel as to, see Estoppel.
 As to fixtures, see Fixtures.
 Matters as to homestead, see Homestead.
 Rights of husband and wife in, see Husband and Wife.
 Of infant, see Infant.
 Injunction against transfer or disposition of, see Injunction.
 Lien of judgment upon, see Judgment; Execution.
 Matters as to landlord and tenant, see Landlord and Tenant.
 Lateral support for, see Lateral Support.
 Life estate in, see Life Tenants.
 When suit respecting is barred by limitations, see Limitation of Actions; Adverse Possession.
 Pending suit affecting, see *Lis Pendens*.
 Mortgage on, see Mortgage.
 Party in suit by one claiming, see Parties.
 Partition of, see Partition.
 Right of partner in real property owned by partnership, see Partnership.
 Averments as to ownership of title, see Pleading.
 Powers as to, see Powers.
 As to public lands, see Public Lands; Mines and Minerals.
 As to records of title, see Records and Registry Laws; Land Titles.
 Specific performance of contracts as to, see Specific Performance.
 Taxation of, see Taxes.
 Trust in, see Trusts.
 Defects in title to, see Vendor and Purchaser.
 Estates or interests created by will, see Wills, III.; Descent and Distribution.
 Land Titles Act, affecting transfers of and liens on, see Land Titles.

RECEIVERS.

- I. APPOINTMENT; REMOVAL.
 - A. In general; jurisdiction.
 - B. In what cases.
- II. POWERS, LIABILITIES, PROPERTY, AND CONTROL.
- III. CLAIMS AGAINST; PRIORITIES; RECEIVERS' CERTIFICATES.
- IV. ACTIONS AND REMEDIES.
- V. EXPENSES OF RECEIVERSHIP; COMPENSATION.
- VI. FOREIGN AND ANCILLARY RECEIVERS.
- VII. SALES BY RECEIVER; RIGHTS OF PURCHASER.

Powers of liquidators upon dissolution and wind-up, see Corporations and Companies.
 General assignees, see Assignment for Creditors.

Annotations.

Appointment of receivers and trustees in charge of enemy companies and firms during war: 23 D.L.R. 375, 379.

When appointed: 18 D.L.R. 5.

I. Appointment; removal.

A. IN GENERAL; JURISDICTION.

(§ I A—1)—NATURE OF OFFICE—REPRESENTATIVE CAPACITY.

A receiver appointed by the Court is an officer of the Court, and represents neither the plaintiff nor the defendant. [*Moss SS. Co. v. Whinney*, [1912] A.C. 254; *Parsons v. Sovereign Bank*, 9 D.L.R. 476, [1913] A.C. 160, referred to.]

Trusts & Guarantee Co. v. Grand Valley R. Co., 24 D.L.R. 171, 34 O.L.R. 87, 8 O.W.N. 416.

B. IN WHAT CASES.

(§ I B—10)—PARTNERSHIPS — DISCRETION AS TO APPOINTMENTS.

In partnership actions, the Court has power, although reluctantly exercised, to appoint a receiver at any stage of the action for sufficient cause; but no such appointment will be ordered because of a failure to comply with the Court's direction to pay into a named bank all money received in connection with the partnership business, particularly where such neglect was due to a misunderstanding, before allowing an opportunity to remedy such neglect.

Merriam v. Kenderdine Realty Co., (No. 2), 25 D.L.R. 375, 34 O.L.R. 563, 9 O.W.N. 129.

[Note.—The Court was, by special leave, moved by counsel for the defendant to vary the minutes of this judgment, on the ground of mistake in the admissions of counsel. The Court allowed the applicant company a further period of two weeks to pay into the bank of sum improperly retained by the company; and, the company making default, a receiver was appointed on December 1, 1915.]

(§ I B—10)—APPLICATION FOR RECEIVERSHIP ORDER—BUSINESS AND PROPERTY OF MARRIED WOMAN—JUDGMENT OBTAINED AGAINST HUSBAND—ABSENCE OF FRAUD.
Walker v. Brown, 8 O.W.N. 484.

(§ I B—12)—APPOINTMENT IN FORECLOSURE ACTIONS—PARTIES—MOTIONS AND ORDERS.

Britsch v. Piper, 25 D.L.R. 861, 9 W.W.R. 641, 33 W.L.R. 46.

II. Powers, liabilities, property, and control.

(§ II—18) — PARTNERSHIP — AFFAIRS IN HANDS OF RECEIVER—SALE OF BOOK-DEBTS—ACTION AGAINST PURCHASER FOR PRICE—INCOMPLETE CONTRACT—ASSENT OF RECEIVER WITHELD.

Brandon v. Braden, 9 O.W.N. 77.

III. Claims against; priorities; receivers' certificates.

(See previous Annual Digests.)

IV. Actions and remedies.

(§ IV—31)—ACTION AGAINST LIQUIDATOR OF COMPANY FOR WAGES—NECESSITY FOR LEAVE OF COURT—QUESTION OF LAW—DETERMINATION BY DIVISION COURT JUDGE—RIGHT TO REVIEW—MOTION FOR PROHIBITION—COSTS.

Re Knickerbocker v. Union Trust Co., 9 O.W.N. 52.

V. Expenses of receivership; compensation.

(§ V—42)—COMMISSIONS—COLLECTIONS AND SECURITIES.

An allowance of 5 per cent. of the total cash receipts and securities is a fair remuneration to a receiver, and though the receiver paid 10 per cent. commission on collections out of the estate, he is nevertheless entitled to remuneration on those collections.

Campbell v. Arndt, 24 D.L.R. 699, 8 S.L.R. 320, 9 W.W.R. 57, 32 W.L.R. 249.

(§ V—42)—HEARING OF RECEIVER'S ACCOUNT—REPRESENTATION AT—RIGHTS OF BOND-HOLDERS.

A receiver appointed on behalf of a mortgagee of the assets and undertakings of a railway company does not constitute a representation of the interests of bondholders upon the passing of accounts and fixing his remuneration; nor is that defect cured by the appointment of a solicitor, who is also a bondholder, to represent their interests where his appointment lapses upon his taking office as judge prior to the hearing, even though the latter procured other counsel to appear for him, and the Court, upon a proper certification of the proceedings, will re-open the question at the instance of the bondholders for the purpose of a re-hearing.

Trusts & Guarantee Co. v. Grand Valley R. Co., 24 D.L.R. 171, 34 O.L.R. 87, 8 O.W.N. 416.

VI. Foreign and ancillary receivers.

VII. Sales by receiver; rights of purchaser.

See also Judicial Sale.

(See previous Annual Digests.)

RECITAL.

In deed, see Deeds; Contracts.

In will, see Wills.

Estoppel by, see Estoppel.

RECOGNIZANCE.

Of appeal, see Appeal.

See also Bail and Recognizance.

RECORDS AND REGISTRY LAWS.

I. IN GENERAL.

II. JUDICIAL RECORDS.

III. RECORDS OF TITLE OR OWNERSHIP.

A. In general; what may be recorded.

B. Requisites and sufficiency of record.

C. Necessity of recording; effect of failure; reliance upon records.

D. As notice; effect of recording.

Record on books of corporation of transfer of stock, see Corporations and Companies.

Estoppel by record, see Estoppel.

Records as evidence generally, see Evidence.

Time of filing mechanics' lien, see Mechanics' Liens.

Record of judgment, see Judgment. On appeal, see Appeal.

Of chattel mortgage, see Chattel Mortgages.

Recording conditional sale, see Sale.

As to bills of sale, see Bills of Sale.

Registration under Land Titles Acts, see Land Titles.

Right to inspect public records, see Municipal Corporations, II I.

III. Records of title or ownership.

A. IN GENERAL; WHAT MAY BE RECORDED.

(§ III A—10)—TRUSTS—PURCHASE OF LANDS BY AGENT—EQUITY OF PRINCIPAL.

The registry laws giving priority to a later instrument if the former instrument affecting the land has not been registered, have no application to the equity of a principal in the land purchased in the agent's name, which does not admit of registry.

Miller v. Halifax Power Co., 24 D.L.R. 29, 48 N.S.R. 370.

(§ III A—10)—DISCRETION OF REGISTRAR—FOREIGN POWER OF ATTORNEY—VALIDITY OF EXECUTION.

The Court will not interfere with the registrar's exercise of discretion under sec. 80 (1) of the Land Registry Act in refusing to register a certified copy of a power of attorney executed in another jurisdiction not in conformity, as to acknowledgment and proof of execution, with the requirements of the Land Registry Act and the Power of Attorney Act.

Re Land Registry Act and Clancy, 25 D.L.R. 536, 21 B.C.R. 1.

(§ III A—10)—SUPPLEMENTARY DEED—POWER OF ATTORNEY.

It is not necessary to register the powers of attorney, authorizations and other documents referred to in a deed, the third party being obliged to take cognizance of them. The Registry Acts only require the mention in the memorandum of the nature of the right or the amount of the sum due, and not the conditions on which the debt will be exigible the third party being obliged to take cognizance of them. It is not necessary to register the supplementary deed annexed to a deed for a loan in which supplementary deed are found the conditions that the whole debt will become exigible if the borrower upon hypothec does not make known to the lender every change in the property hy-

potheated or makes default in payment of any instalment of interest as it becomes due. *Legault v. Drouin*, 47 Que. S.C. 538.

(§ III A—11)—RESCISSION OF REGISTRATION—PROOF OF OWNERSHIP.

The person who demands that the registration of an immoveable should be expunged from the registry should prove that he is owner of this immoveable, and his action will be dismissed if the property belongs to his wife.

Trudel v. Marquette, 24 Que. K.B. 279.

B. REQUISITES AND SUFFICIENCY OF RECORD.

(§ III B—15)—DEEDS—REQUISITES—CONSIDERATION.

In order that a deed may be operative under the Registry Act it must be founded on a valuable consideration; a mere recital of such payment in the deed is not enough, and to overcome it it is necessary to prove valuable consideration and absence of notice. (R.S.N.S. 1900, ch. 137, sec. 15.)

Miller v. Halifax Power Co., 24 D.L.R. 29, 48 N.S.R. 370.

(§ III B—15)—DEED OF DONATION INTER VIVOS — OMISSIONS — HYPOTHECARY RIGHTS.

In the registration of a deed of donation inter vivos the omission of the following words, "and the accomplishment of the other obligations above mentioned," in a clause creating a hypothec to guarantee the payments imposed by the donation does not affect this registration nor the hypothecary rights of the parties, because it does not fall within any essential provision which should be stated in a schedule or in a certificate of the registrar.

Drouin v. Gaudet, 48 Que. S.C. 137.

C. NECESSITY OF RECORDING; EFFECT OF FAILURE; RELIANCE UPON RECORDS.

§ III C—21)—REGISTRATION OF SUBSTITUTION—RIGHTS OF PURCHASER AT SUBSEQUENT SALE UNDER EXECUTION.

The judgment appealed from, 19 R.L.N.S. 444, affirming the judgment of the Superior Court, which maintained the plaintiff's action to recover certain substituted lands on the ground that the rights of the substitute had not been purged by a sheriff's sale thereof, was affirmed with a variation in regard to the expertise ordered respecting the amounts to be allowed to the purchaser at the sheriff's sale for improvements made thereon and as to accounts for rents, issues and profits. (Brodeur, J., dissented.) Per Duff and Anglin, JJ.: The provisions of the Civil Code in regard to the registration of unopened substitutions do not contemplate registration affecting immoveables, as such, but refer merely to registration necessary to the operation of the instrument creating the substitution; consequently, arts. 2090 and 2091 of the Civil Code have no application. Per Duff, J., Brodeur, J., contra: Art. 781 of the Code of Civil Procedure deals primarily with procedure, and should

be construed in connection with art. 953 of the Civil Code so as to effectuate rights resting upon the provisions of the Civil Code relating to substantive law. [*Vadeboncoeur v. City of Montreal*, 29 Can. S.C.R. 9, distinguished.] Per Duff and Anglin, JJ.: The registration of an instrument creating a substitution is effective from the date upon which it is registered, and protects the rights of the substitute against the right acquired by a purchaser under a subsequent sale in execution made by the sheriff. [*Trudel v. Parent*, 2 Que. Q.B. 578, referred to.] Per Anglin, J.: In the case of a sale under execution against an institute, subsequent to the registration of the substitution, the purchaser at sheriff's sale acquires merely the personal interest of the institute subject to the substitution; such a title cannot defeat the claim of the substitute. Per Brodeur, J., dissenting: Inasmuch as the claim of the execution creditor was for a debt due and exigible prior to the date when the instrument creating the substitution was registered, the effect of the sale by the sheriff was to discharge the immoveable sold from the claim of the substitute and to give the purchaser at that sale an absolute title to the land having priority over that of the substitute.

Leroux v. McIntosh, 52 Can. S.C.R. 1, 26 D.L.R.

(§ III C—21)—EFFECT OF REGISTRY—NOTICE—RIGHTS OF SUBSEQUENT PURCHASERS.

To disentitle a party from insisting in equity on a legal priority acquired under a registry law, actual notice is required; after such notice it would be a fraud for the party who had bought with notice to claim the benefit of the registry law as against the unregistered claim of which he had notice. [*Ross v. Hunter*, 7 Can. S.C.R. 289, followed.]

Tom Gung v. Fong Lee, 22 D.L.R. 809, 48 N.S.R. 317.

D. AS TO NOTICE; EFFECT OF RECORDING.

(§ III D—30)—GRANTEE UNDER QUIT CLAIM DEED AS BONA FIDE PURCHASER—PRIORITY TO PREVIOUS UNREGISTERED LIEN.

Under the Registry Act a grantee under a registered quit claim deed without notice, who holds the land as trustee for the payment of certain claims, stands in the position of a bona fide purchaser and has a prior right over a previous agreement by the grantor to give a mortgage and specifically charging the land with a lien inoperative under sec. 7 of the Lien Notes Act, R.S.M. ch. 115. [*Stark v. Stephenson*, 7 Man. L.R. 381, followed.]

Waterloo Manufacturing Co. v. Barnard, 25 D.L.R. 605, 9 W.W.R. 870, affirming 9 W.W.R. 177, 32 W.L.R. 447.

(§ III D—30) — APPLICATION TO REGISTER LAND AGREEMENT AND ASSIGNMENT—NOTICE TO ONE FILING MECHANIC'S LIEN.
A., as security for a loan, received from

B. a conveyance in fee simple of lands, subject to an agreement for sale. A. also received, by way of separate document, an assignment of the agreement for sale, containing the usual vendor's covenants. A. then filed for registration on one application the agreement for sale and assignment, and this was not disposed of until after the sale hereinafter mentioned. A short while afterwards, mechanics' liens were filed against these lands; action was taken, judgment secured, and the lands sold to C. A. was not made a party to the action, was not brought in on the reference as to the title, and had no notice of the proceedings until several months after the sale. The registrar of the Court, by inadvertence, omitted to make any mention of A.'s application for registration, although there was produced to him on the reference a certificate of encumbrance on which the application was noted. A.'s application was cancelled by the District Registrar some time after the above sale, on the ground that as the vendor was registered in fee, they could not register the vendor's assignment of the agreement. A. now sued C. for title to the land:—Held, that as C. had been negligent in not searching the records of the Land Registry office, notice could be imputed to him, even though the District Registrar had rejected A.'s application.

National Mortgage Co. v. Rolston, 8 W.W.R. 630.

(§ III D—30) — KNOWLEDGE OF UNREGISTERED RIGHT—RIGHT OF SUBSEQUENT PURCHASER.

Knowledge acquired of an unregistered right belonging to a third party and subject to the formality of registration cannot prejudice the rights of one who has since acquired it for value.

Doyle v. Couture, 48 Que. S.C. 124.

(§ III D—31)—REGISTRATION OF SUPPLEMENTARY DOCUMENT TO DEED—NOTICE TO SUBSEQUENT PURCHASER—HYPOTHEC.

It is necessary to register the supplementary document mentioned in a deed as being annexed thereto when such document contains important clauses the knowledge of which is essential for the protection of a third party. But when in such supplementary document not registered there is found a condition that the borrower upon hypothec must make known to the lender every change in the property hypothecated under penalty of the entire debt becoming exigible, a person subsequently acquiring the property is not bound by such clause and can resist an hypothecary action.

Richer v. Horlick, 47 Que. S.C. 540.

RECOVERY OF PAYMENTS.

In general, see Contracts, VI.
Payments under mistake, see Mistake.

RE-ENTRY.

By landlord, see Landlord and Tenant.

REFERENCE.

As to arbitration, see Arbitration.

As to damages, see Damages.

REFORMATION OF INSTRUMENT.

(§ I—1)—MISTAKE—EVIDENCE IN VARIANCE WITH CONTRACT—ADMISSIBILITY.

In the absence of a case made out for rectification of a document by reason of mistake, evidence is not admissible to shew that the writing intended to be complete in itself does not express the real agreement. [Eaton v. Crooks, 3 A.L.R. 1; Carter v. C.N.R. Co., 24 O.L.R. 377, referred to.]

Bible v. Croasdale, 24 D.L.R. 763, 9 A.L.R. 133, 8 W.W.R. 497.

REGISTRATION.

Of voters, see Elections.

In general, see Records and Registry Laws.

Of bills of sale, see Bills of Sale.

Of chattel mortgages, see Chattel Mortgages.

Of mechanics' liens, see Mechanics' Liens.

Of mining claims, see Mines and Minerals.

Of transfers under land titles statutes, see Land Titles.

RELEASE.

Of damages for injuries, see Death; Master and Servant.

To railways, see Railways; Carriers.

In expropriation, see Eminent Domain.

RELEVANCY.

Of evidence, see Evidence.

RELIGIOUS SOCIETIES.

See also Charities; Benevolent Societies; Associations.

Annotation.

Libel and slander in church matters: 21 D.L.R. 71.

Title to, or control of, property.

(§ III A—20)—CONTROL OF CHURCH PROPERTY—MORTGAGE—POWERS OF TRUSTEES.

Re Lutheran Church of Hamilton, 24 D.L.R. 879, 34 O.L.R. 228, 8 O.W.N. 556.

Expulsion or excommunication.

(§ VI—45)—REINSTATEMENT BY COURT.

The Church possesses material property which gives the Court jurisdiction to adjudicate upon the civil rights of the members thereof as members of a society possessing property, and may therefore review the regularity of the expulsion of a member and order the restoration of his rights. [Pinke v. Bornhold, 8 O.L.R. 575, disapproved;

Gray v. Christian Assn., 137 Mass. 329; Can. R. Assn. v. Pammenter, 180 Mass. 418, applied.]

Patillo v. Cummings, 24 D.L.R. 775.

Contracts.

(§ VII—50)—PERSONAL LIABILITY OF MAJORITY AUTHORIZING—RIGHTS OF DISSENTING MINORITY.

Where the majority of the members of an unincorporated church congregation, by resolution at a meeting at which the contractor, a member of the congregation, was present, authorize a contract to be entered into by trustees on their behalf and a minority dissent, the individual members of the majority must be taken to have recognized the element of personal liability and are personally liable to the contractor, but the individual dissentients are not, it being held in the circumstances that the knowledge of their dissent must have been in the contractor's mind when he undertook the work. Rohl v. Pfaffenroth, 31 W.L.R. 197.

(§ VII—50)—GOODS SOLD TO CHURCH—LIABILITY OF BOARD OF TRUSTEES.

An action for price of lumber sold defendant:—Held, on the evidence, that there was no promise to pay by the board of trustees or any one authorized by them on their behalf. Action dismissed.

Rogers Lumber Yards v. Methodist Church of Brock, 31 W.L.R. 547.

REMAINDERS.

In-general, see Life Tenants; Deeds; Wills, III.

REMEDIES.

On contracts, see Contracts.

For enforcing liability of stockholder, see Corporations and Companies.

Election of, see Actions; Election of Remedies.

In case of false representations, see Fraud and Deceit.

In case of fraudulent conveyance, see Fraudulent Conveyances.

Of insured, see Insurance.

For nuisance, see Nuisances.

Of parties to sale, see Sale; Vendor and Purchaser.

For trespass, see Trespass.

For workmen's compensation for injuries, see Master and Servant, V.

For death, see Death.

REMOVAL OF CAUSES.

See also Courts; Venue.

(§ I A—2)—ACTION INVOLVING VALIDITY OF WILL—REMOVAL FROM SURROGATE COURT TO KING'S BENCH.

Where there are circumstances which prima facie shew that a strict investigation should be made of all the facts surrounding the making of an alleged will before admitting it to probate, the cause should be

removed from the Surrogate Court to the Court of King's Bench, as the latter Court possesses an ampler and a more effective machinery for such investigation.

Jones v. Momborg, Re L. Jones, 21 D.L.R. 863, 25 Man. L.R. 504, 8 W.W.R. 1059.

(§ I A—2)—COUNTY COURTS—TRANSFER OF ACTION TO SUPREME COURT OF ONTARIO—GROUNDS FOR — PRACTICE — COUNTY COURTS ACT, R.S.O. 1914, CH. 59, SECS. 29, 30.

McConnell v. Tp. of Toronto, 7 O.W.N. 745.

(§ I A—2)—DIVISION COURT—ORDER TRANSFERRING ACTION AFTER JUDGMENT—JURISDICTION—DIVISION COURTS ACT, R.S.O. 1914, CH. 63, SEC. 79—JUDGMENT SUMMONS—"ACTION"—TRANSCRIPT OF JUDGMENT—SEC. 188.

Standard Bank v. Ellis, 9 O.W.N. 177.

(§ II A—20)—REMOVAL TO SUPREME COURT—JURISDICTION OF LOCAL MASTER.

Robin Hood Mills v. Mitchell, 24 D.L.R. 896, 8 S.L.R. 163, 8 W.W.R. 564.

(§ II A—22)—QUESTIONS OF TITLE TO LAND—APPLICATION, HOW INTITULED.

Where a plaintiff pleads trespass to lands and the defence raises a question of title, that is no reason why the action should not be brought in a District Court. An application to transfer an action from the District to the Supreme Court should be intituled "In the Supreme Court."

McRadu v. Lumber Mfg. Yards, 9 W.W.R. 633.

RENEWAL.

Of promissory note, see Bills and Notes.

Of lease, see Landlord and Tenant.

Of mortgage, see Mortgage; Chattel Mortgage.

REPEAL.

Of statute, see Statutes.

Of by-law, see Municipal Corporations.

REPLEVIN.

(§ I A—4)—FOR WHAT—PROMISSORY NOTE.

A promissory note is a chattel and subject to replevin under the County Courts Act, R.S.M. ch. 44, sec. 222, by the party entitled to the possession.

Wilton v. Manitoba Independent Oil, 25 D.L.R. 243, 25 Man. L.R. 628, 9 W.W.R. 202, 32 W.L.R. 465.

(§ I A—4)—EXCHANGE OF LANDS FOR CHATTELS—OWNER OF LAND REPLEVYING CHATTELS—PREMATURE ACTION—AMENDMENT—SPECIFIC PERFORMANCE—COSTS.

Spectar v. Cluthe, 9 O.W.N. 201.

REPLY.

In general, see Pleading.

REPRESENTATIONS.

Estoppel by, see Estoppel.

False representations generally, see Fraud and Deceit.

In application for insurance, see Insurance.

As to lands, see Vendor and Purchaser.

REPUTATION.

Evidence of, see Evidence.

Injuries to, see Libel and Slander.

REQUETE CIVILE.

Proceedings by, to set aside judgment in Quebec, see Judgment, VII.

RESCISSION.

Of contracts, see Contracts, V.

Of sale, see Sale, III.

Of land contract for want of title, see Vendor and Purchaser.

RES GESTAE.

See Evidence, X.

RES JUDICATA.

Former jeopardy as a bar, see Criminal Law.

Conclusiveness of judgment, see Judgment, II.

RESPONDEAT SUPERIOR.

See Master and Servant; Principal and Agent.

RESTRAINT OF TRADE.

Contracts in restraint of trade generally, see Contracts, III.

REVENICATION (Que.).

See Sale; Vendor and Purchaser.

REVIEW.

Of order or judgment, see Appeal.

Of judgment, see Judgment, VII.

Of assessments, see Taxes, III.

REVIVOR.

Of judgment, see Judgments, VI; Execution.

REVOCATION.

Revocability of option contract, see Contracts; Vendor and Purchaser.

Of deed, see Deeds.

Of letters of administration, see Executors and Administrators.

Of liquor license, see Intoxicating Liquors, II.

Of license generally, see License.

Of agent's authority, see Principal and Agent; Brokers.

Of will, see Wills.

RIGHT OF WAY.

See Easements.

Expropriation by railway, see Eminent Domain.

As to streets and highways, see Highways.

RIVERS.

See Waters.

As to logs, see Logs and Logging; Timber.

As to fisheries, see Fisheries.

RULES OF COURT.

See Courts.

SALE.

I. WHAT CONSTITUTES; VALIDITY; EFFECT.

A. In general.

B. Passing of title: delivery.

C. Conditional sales.

D. Acceptance; retention.

II. WARRANTY.

A. In general.

B. By description.

C. Of quality; genuineness, or fitness.

D. Effect of inspection; or opportunity to inspect.

III. RIGHTS AND REMEDIES OF PARTIES.

A. In general.

B. Lien for price; stoppage in transitu.

C. Rescission.

D. Rights of bona fide purchasers.

IV. BULK SALES.

Registration of bills of sale, see Bills of Sale.

Mortgagor's power of, under chattel mortgage, see Chattel Mortgage.

Construction of contract for generally, see Contracts, II.

Of corporate stock, see Corporations and Companies.

Measure of damages, see Damages, III.

Of homestead, see Homestead, IV.

Of intoxicating liquors, see Intoxicating Liquors.

Of infant's property, see Infants.

Judicial sale, see Judicial Sale; Execution.

On foreclosure, see Mortgage, VI.

On Sunday, see Sunday.

For taxes, see Taxes, III.

By trustee, see Trusts.

Of land generally, see Vendor and Purchaser.

As to offers and their acceptance, see Contracts, I.

Sale as fraud on creditors, see Fraudulent Conveyances.

As to specific performance, see Specific Performance.

I. What constitutes; validity; effect.

A. IN GENERAL.

(§ I A—1)—INSTALLATION OF MACHINERY—WORK AND LABOUR.

A verbal agreement for the sale and installation of an oil burning plant which involves the work of ripping out an old plant and affixing to the freehold the substituted equipment is a contract for work and labour and not for goods sold and delivered, which

is not governed by the provisions of the Sale of Goods Act (B.C.). [Lee v. Griffin, 1 B. & S. 272, applied.]

British American Paint Co. v. Fogh, 24 D.L.R. 61, 8 W.W.R. 1331, 32 W.L.R. 142.

(§ I A-1)—CONSTRUCTION OF ELECTRIC SIGN.

A contract by which a company undertakes to make and set up a complete electrical sign for a fixed price, is a sale and not a contract for the hiring of services.

Macey Sign Co. v. Routtenberg, 48 Que. S.C. 346.

(§ I A-1)—TRANSFER OF LITIGIOUS RIGHTS—DISCHARGING MUNICIPALITY FROM LIABILITY—TAXES ILLEGALLY IMPOSED.

A transfer by a person of all rights, actions and claims against a municipality for repayment of taxes illegally and irregularly imposed upon immovable properties and paid by him, is a sale of litigious rights permitting to the municipality to be relieved of liability in the manner provided by art. 1582 C.C.

McCarthy v. City of Hull, 24 Que. K.B. 191.

(§ I A-1)—SALE BY INTERVENTION—WHEN ACCEPTED BY PRINCIPAL.

In the sale by intervention of an agent the vendor is not sufficiently put en demeure if an actual offer of the price agreed upon within the delay given to the agent for affecting the sale is not given to him.

Henry v. Beaulieu, 47 Que. S.C. 458.

B. PASSING OF TITLE; DELIVERY.

(§ I B-5)—DELIVERY—DUTY OF SELLER.

In the absence of a counter agreement the seller is not bound to send or carry the goods to the buyer; he does all that he is bound to do by leaving or placing the goods at the buyer's disposal so that the latter is able to remove them. [Smith v. Chance, 2 B. & Ald. 753; Wood v. Tassell, 6 Q.B. 234, referred to.]

Hertle v. Jenny, 22 D.L.R. 742, 49 N.S.R. 6.

(§ I B-5)—DELIVERY AND ACCEPTANCE—GIVING IN PAYMENT.

Giving in payment is not an act of commerce intrinsically, but it may become so by reason of the status of the parties. Thus, when a giving in payment is set up by a trader against a non-trader, it cannot be proved by witnesses. The exception contained in art. 2260, par. 5, C.C., which says that sale of moveables between a trader and a person who is not, is always considered to be a commercial sale, is limited to the sale, and like every exception cannot be extended. Now, according to art. 1592, C.C., a giving in payment is not a sale, and is only equivalent to a sale when there has been delivery. When a purchaser takes possession of goods that he claims to have purchased notwithstanding the prohibition of the owner there has been neither delivery nor acceptance of these goods.

Lortie v. Marien, 47 Que. S.C. 255.

(§ I B-6)—RIGHT OF INSPECTION.

Where goods are sold through a broker, and the seller undertakes to deliver goods of a particular quality to a carrier to be forwarded to the buyer at a distant place, to be paid for on arrival, the right of inspection continues till the goods arrive and are accepted at their ultimate destination, namely, the buyer's warehouse. [Thomson v. Dymont, 13 Can. S.C.R. 303, distinguished.]

Thames Canning Co. v. Eckardt, 23 D.L.R. 805, 34 O.L.R. 72, 8 O.W.N. 395.

(§ I B-6)—SALE OF GOODS—ACTION FOR PRICE—WRITTEN AGREEMENT—ABSENCE OF EXPRESS WARRANTY—CAVEAT EMPTOR—SALE OF SPECIFIC ARTICLE OR ARTICLE OF SPECIFIED CLASS—DOUBTFUL DESCRIPTION—PAROL EVIDENCE TO EXPLAIN—RIGHT TO INSPECT AND REJECT—PROVISION OF AGREEMENT THAT PROPERTY NOT TO PASS TILL PAYMENT—EVIDENCE JUSTIFYING REJECTION—FINDING OF TRIAL JUDGE—APPEAL.

Butler v. Dunlop, 8 O.W.N. 162.

(§ I B-6)—SALE OF GOODS—CONTRACT—PLACE OF PAYMENT—BREACH IN ONTARIO—JURISDICTION OF ONTARIO COURT—RIGHT TO REJECT GOODS—INSPECTION—DELIVERY TO CARRIER—STATUTE OF FRAUDS—LEAVE TO SET UP BY AMENDMENT—MEMORANDUM IN WRITING—CORRESPONDENCE—ACCEPTANCE BEFORE REPUDIATION.

Slowman v. Brenton, 8 O.W.N. 477.

(§ I B-9)—CONSTRUCTIVE DELIVERY—GOODS IN POSSESSION OF THIRD PARTY.

Where there is a sale of goods which at the time of the sale are not in the possession of the vendor, but in the possession of a third party, and that party is made aware of the sale and consents to the goods remaining in his possession as the goods of the vendee, that is sufficient actual change of possession to support the sale. [Jones v. Henderson, 3 Man. L.R. 433; Re Cunningham, 28 Ch.D. 682; McNichol v. Brucks, 6 Terr. L.R. 184, referred to.]

Scharf v. Dillabough, 22 D.L.R. 569, 8 W.W.R. 221, 30 W.L.R. 846.

(§ I B-9)—CONSTRUCTIVE DELIVERY—GOODS IN POSSESSION OF THIRD PERSON.

Possession is acquired not only by corporeal delivery, but also by an actual and implied delivery when the purchaser takes possession of the thing sold with consent of the vendor, even when there was no contact with the thing itself. Thus one who purchases a horse in possession of a third party and notifies the latter of his purchase and asks him to keep the horse for him sufficiently takes possession of it.

Mailloux v. Beaudry, 48 Que. S.C. 9.

(§ I B-9)—SALE OF BOAT—SUFFICIENCY OF DELIVERY.

Upon the sale of a boat, delivery thereof is inferred immediately upon payment of

part of the purchase price, particularly where the buyer is permitted to use the boat without any objection by the seller.

Loisier v. Mallay, 24 D.L.R. 315, 43 N.B.R. 364.

(§ I B-9)—SUFFICIENCY OF DELIVERY—BULK QUANTITIES.

When a certain quantity of moveables is sold to furnish a house, this sale is that of an entire quantity, and delivery is only complete when the last moveable is delivered.

Valiquette v. Gagnon, 48 Que. S.C. 442.

(§ I B-9)—GOODS NOT APPROPRIATED AT TIME OF PURCHASE—CANCELLATION.

The defendant having at the solicitude of the plaintiff's agent signed a contract for the purchase of certain volumes on the instalment plan, the goods at the time of the purchase not being in a deliverable state, and not being actually appropriated to the contract, the defendant on the same day, by letter, cancelled the order:—Held, that the implied assent to an appropriation of the goods was withdrawn by the letter of cancellation, and that the plaintiffs could not thereafter convert the executory contract into an executed one. [*Sells Limited v. Thomson Stationery Co.*, 27 W.L.R. 903, followed.]

Publishers Assn. v. Rowland, 32 W.L.R. 646.

(§ I B-9)—PERISHABLE GOODS—DELIVERY TO AGENT OF PURCHASER FOR CARRIAGE—INSTRUCTIONS AS TO PRESERVATION IN CARRIAGE—DUTY OF VENDORS—GOODS RENDERED USELESS BY NEGLIGENCE OF PURCHASER'S AGENT—LIABILITY FOR LOSS.

Van Zonnefeld v. Gilchrist, 8 O.W.N. 4.

(§ I B-10)—POSTPONEMENT OF DELIVERY—CONSENT.

A postponement of the time of delivery, whether at the instance of the seller or of the buyer of the goods, to which the other party assents, has not the effect of abrogating the contract. [*Tyers v. Rosedale & Ferryhill Iron Co.*, 44 L.J. Ex. 130, referred to.]

Western Canada Flour Mills Co. v. Crown Bakery, 21 D.L.R. 641, 32 W.L.R. 179.

(§ I B-11)—TIME OF DELIVERY—DELAY—REFUSAL TO ACCEPT.

Phipps v. Freeland, 25 D.L.R. 858, 32 W.L.R. 365.

(§ I B-12)—SALE F.O.B.—GOODS DAMAGED BY FROST—LIABILITY.

A frost severe enough to damage potatoes in transit by rail is to be treated as something out of the ordinary course, the risk of which must rest upon the buyer under a contract of sale f.o.b. at point of shipment, unless there is an indication of a contrary intention in the contract. [*Beer v. Walker*, 46 L.J.C.P. 677, considered.]

Mayhew v. Scott Fruit Co., 21 D.L.R. 54, 8 A.L.R. 66, 7 W.W.R. 1140, 30 W.L.R. 466.

C. CONDITIONAL SALES.

(§ I C-15)—OF DEBENTURES SUBJECT TO APPROVAL OF SOLICITOR—BREACH.

Where a company buys the debentures of a municipality by wire, subject to the approval of its solicitor, it is a conditional sale; and the municipality is not responsible in damages if the sale does not take place, because the solicitor reported unfavourably.

Canada Investment v. Corp. of Scotstown, 48 Que. S.C. 97.

(§ I C-15)—RESALE BY CONDITIONAL PURCHASER WITH VENDOR'S ASSENT—WARRANTY—BREACH.

Goods sold under a conditional sale agreement were re-sold by the conditional purchaser to the defendants at a price larger than the amount due to the conditional vendor. The conditional vendor assented to the sale, and the defendants agreed to pay the amount of the claim. Judgment was given in the conditional vendor's favour for the amount, and it was held that it was not concerned with the contention of the defendants that the conditional purchaser had given to them a guarantee as to the condition of the goods and that such guarantee had been broken.

J. I. Case Threshing Co. v. Wrenshall, 30 W.L.R. 521.

(§ I C-15)—RETENTION OF OWNERSHIP—IMMOVEABLE BY DESTINATION—REVENDEICATION.

To convert a moveable into an immoveable by destination by incorporating it in the immoveable it is necessary to be owner of the moveable and the immoveable. Thus, when a bar and wine cabinet are sold conditionally the vendor retaining the right of ownership until full payment is made and the purchaser places them permanently in his own hotel, the vendor has a right to revendicate them as against even privileged or hypothecary creditors of the purchases.

Brasserie Champlain v. St. Roch Hotel, 47 Que. S.C. 113.

(§ I C-15)—CONDITIONAL SALE OF MACHINE—PROVISION FOR SALE UPON DEFAULT OF PAYMENT AND APPLICATION OF PROCEEDS UPON PROMISSORY NOTE GIVEN FOR PRICE—LIABILITY OF PERSON ENDORSING AS SURETY—REPOSSESSION OF MACHINE BY VENDOR AND USE IN BUSINESS.

Crane v. Hoffman, 8 O.W.N. 500.

(§ I C-16)—NON-COMPLIANCE WITH STATUTE—PRIORITY OVER DISTRAINING LANDLORD.

The fact that a conditional sale agreement does not comply with the provisions of the Conditional Sales Ordinance does not disentitle the vendor from setting up a claim to the goods comprised in such agreement as against a landlord distraining for rent.

Re Osborne and Hudsons Bay Co., 8 W.W.R. 821.

(§ I C-19)—VENDOR RE-TAKING POSSESSION—RETENTION OF LIEN.

Where by the terms of a contract of sale

of personal chattels, a lien is to be retained thereon in favour of the vendor until payment is made, such lien is not destroyed by any possession taken by the vendor authorized by the contract in the usual course of such business.

Reyneurt v. VanWalleghen, 9 W.W.R. 958.

(§ I C—19)—VENDOR RE-TAKING POSSESSION — RESCISSION — RIGHT TO PURCHASE PRICE INSTALMENTS.

An agreement for the sale of a hotel business which reserves unto the vendor the title to the property until the purchase price is paid, does not operate as an absolute sale as to render it subject to rescission on default within the meaning of art. 1541 C.C. Que.; nor will the commencement of an action for the re-possession of the property, under the terms of the agreement, amount to a rescission as precluding the vendor, by virtue of art. 1541, from claiming the balance of the purchase price due under the contract.

St. Charles v. Monette, 47 Que. S.C. 164.

D. ACCEPTANCE; RETENTION.

(§ I D—20)—PRESUMPTION OF ACCEPTANCE.

The buyer of goods is liable because of his acceptance of same if he retained them after actual receipt of same for such a time as to lead to the presumption that he intended to take possession thereof as owner.

Duncan & Buchanan v. Pryce Jones Ltd., 22 D.L.R. 45.

(§ I D—20)—OF DEFECTIVE TRACTION ENGINE.

Where, in a sale of a traction engine, a purchaser accepts the engine and continues to use it after the discovery of defects, he is thereby precluded from later returning the engine. [Alabastine Co. v. Can. Producer etc., Co., 17 D.L.R. 813, 30 O.L.R. 407, applied.]

Haug Bros. v. Murdock, 25 D.L.R. 666, 9 W.W.R. 474, 32 W.L.R. 572.

[Reversed in 9 W. W. R. 1064, 26 D. L. R. 200.]

(§ I D—20)—EFFECT ON APPARENT AND LATENT DEFECTS.

A defect in the "flasher" of an electric sign consisting in the fact that it produces only a red light in place of producing simultaneously a red and white light is an apparent defect. The irregular placing of the interior wires of the sign is a latent defect, but the purchaser cannot complain of it eight months after its installation.

Macey Sign Co. v. Routtenberg, 48 Que. S.C. 346.

(§ I D—20)—RIGHT TO RETURN GOODS AFTER INSPECTION—INFERIOR QUALITY.

When a purchaser has examined merchandise before buying, and has not objected to the price on account of its inferior quality, he cannot afterwards refuse to accept and pay for it on account of such inferiority; in such case the vendor is not a guarantor.

Martin v. Galibert, 47 Que. S.C. 181.

II. Warranty.

A. IN GENERAL.

(§ II A—25)—WARRANTY OR CONDITION — STIPULATION AS TO QUALITY AND PACKING — FOOD ARTICLES.

A buyer who contracts to purchase food articles of a certain quality to be packed in a certain manner purports a condition not a warranty, and he cannot be compelled to accept the articles not so packed or be liable for their contract price, unless from the conduct of the parties a new contract can be implied.

Thames Canning Co. v. Eckardt, 23 D.L.R. 805, 34 O.L.R. 72, 8 O.W.N. 395.

(§ II A—25)—GOOD WORKMANSHIP—BREACH — PROXIMATE CAUSE—ONUS.

In an action for breach of warranty that only the best workmanship and material will be used in the construction of boilers, the onus is upon the purchaser to establish that the leaks and cracks which rendered the boilers unfit for use were the direct and not the probable cause of bad workmanship. [Badcock v. Freeman, 21 A.R. (Ont.) 633; McArthur v. Dominion Cartridge Co., [1905] A.C. 72, distinguished.]

Grant's Spring Brewery Co. v. E. Leonard & Sons, 25 D.L.R. 217, 34 O.L.R. 429, 9 O.W.N. 56.

(§ II A—25)—WARRANTY — BREACH—CHATEL MORTGAGE—CONVERSION.

Weltz v. Hoy, 8 O.W.N. 620.

(§ II A—26)—SALE OF HORSES—WARRANTY—EXPRESS OR IMPLIED.

Bastedo v. Young, 33 W.L.R. 25.

B. BY DESCRIPTION.

(§ II B—30)—SPECIFIC GOODS — WARRANTY AND CONDITION—BREACH—DAMAGES.

Where, under sec. 50 of the Sale of Goods Act (ch. 203 R.S.B.C.), acceptance is inferred after the lapse of a reasonable time for the rejection of goods, a breach of condition entitling to the right of repudiation, particularly in a sale of specific goods, may be treated as a breach of warranty under sec. 19, which will entitle the buyer under sec. 67 to further damages in consequence thereof in addition to the extinction or diminution of the price. [Poulton v. Lattimore, 9 B. & S. 259, followed; Wallis v. Pratt, [1910] 2 K.B. 1003, [1911] A.C. 394, referred to.]

British American Paint Co. v. Fogh, 24 D.L.R. 61, 8 W.W.R. 1331, 32 W.L.R. 142.

C. OF QUALITY; GENUINENESS OR FITNESS.

(§ II C—35)—FARM MACHINERY—STATUTORY REQUIREMENTS AS TO BOILERS—NON-COMPLIANCE WITH.

Regulation 1 of the Department of Public Works, issued under sec. 19 of the Steam Boilers Act, R.S.S., ch. 22, controls and forms part of the specifications set forth in the regulations, and shews that an absolute

compliance with the regulations is not required by the Department, and that a sale could be made of engines which do not strictly comply with the regulation, and the effect is, not to prohibit the sale, but to penalize the engine by reducing the pressure allowed, and consequently does not render any sale void on that account.

Haug Bros. v. Murdock, 25 D.L.R. 666, 9 W.W.R. 474, 32 W.L.R. 572.

[Reversed in 26 D.L.R. 200, 9 W.W.R. 1064.]

(§ II C—35)—SALE OF YACHT—CONDITION AS TO QUALITY—SEAWORTHINESS—NON-FULFILLMENT—RESCISSION—RETURN OF MONEY PAID AND PROMISSORY NOTES GIVEN—DAMAGES—RETURN OF GOODS.

Donovan v. Whitesides, 8 O.W.N. 483, 9 O.W.N. 60.

(§ II C—35)—IMPLIED WARRANTY OF FITNESS FOR SPECIAL PURPOSE—GOODS SUPPLIED NOT AS CONTRACTED FOR—REFUSAL TO ACCEPT—PROMISSORY NOTE GIVEN FOR PART OF PRICE—ACTION ON—DISMISSAL—COUNTERCLAIM—RECOVERY OF MONEYS PAID—DAMAGES.

Watson Carriage Co. v. Auto-Transportation Co., 9 O.W.N. 245.

(§ II C—37)—STIPULATION AS TO BREED—MIXED BREEDS.

An agreement stipulating the sale of foxes "purchased by the vendor from C. Dalton and W. R. Oulton in 1911," does not entitle the buyer to demand the delivery of foxes of the Dalton breed alone. [Coffin v. Gillies, 7 O.W.N. 354, reversing 6 O.W.N. 643, affirmed.]

Coffin v. Gillies, 24 D.L.R. 317, 51 Can. S.C.R. 539.

(§ II C—37)—SALE OF ANIMALS FOR BREEDING PURPOSES—UNDERTAKING—CONSTRUCTION—BREACH.

Baird v. Clark, 8 O.W.N. 113.

(§ II C—37a)—HIGH GRADE SEAL COAT.

Representing a coat to be a "high grade Alaska seal coat" constitutes a warranty as to the quality of the fur and not of the makeup of the coat, which will entitle the buyer to recover the difference in value if the coat turns out to be of a medium grade only.

Laleune v. Fairweather, 25 D.L.R. 23, 9 W.W.R. 567, 32 W.L.R. 917.

D. EFFECT OF INSPECTION; OR OPPORTUNITY TO INSPECT.

(§ II D—40)—DAMAGED AUTOMOBILE—NON-DISCLOSURE.

On the sale of a chattel (ex. gr. an automobile), where there was non-disclosure by the seller of the fact that the chattel had been damaged and the damages repaired, although the chattel could still be classed as new, as represented to be, but nothing was done by the seller to induce the buyer not to avail himself of the means of know-

ledge within his reach, the buyer who accepts the chattel without investigation will be denied damages in respect of such non-disclosure where no material damage had resulted to the chattel so as to make it any less valuable after being repaired, particularly where it was found that such non-disclosure was not designed. [New Brunswick v. Conybeare, 9 H.L.C. 711, 742, applied; Addison v. Ottawa Taxicab Co., 16 D.L.R. 318, distinguished.]

Lee v. Chapin, 23 D.L.R. 697, 8 W.W.R. 436, 31 W.L.R. 113.

[Affirmed in 25 D.L.R. 299, 9 A.L.R. 74, 9 W.W.R. 228, 32 W.L.R. 509.]

(§ II D—40)—IDENTITY OF ENGINE ORDERED—DIFFERENCE IN QUALITY—CAVEAT EMP-
TOR.

Held (per Haultain, C.J.): That the engine being identically of the same make as the one ordered, the difference between a new engine and an old engine was a difference in quality and not in kind, and any warranty in respect thereof was excluded by the terms of the agreement, and that the plaintiffs therefore were entitled to recover. Per Newlands, J.: That the defendant having ordered the identical engine that was shipped to him, he was not entitled to any other engine, and was not justified in refusing to accept delivery or to make settlement, but that such engine was nevertheless subject to the warranties contained in the original agreement, and as the trial Judge's judgment was to the effect that there was a breach of warranty, there should either be a new trial on that question, or a reference to ascertain the amount the defendant would be entitled to set off against the plaintiff's claim. Per Brown, J.: That the engine delivered not being new in all its parts, differed in kind and not simply in quality from the engine which was ordered, and within the contemplation of all parties to the agreement; and that the warranties in the agreement would only become operative as against the defendant when an engine of the kind contemplated by the parties had been furnished; that the inspection made by the defendant of the engine at Regina was of such a casual nature that the doctrine of "caveat emptor" had no application, and that the appeal should be dismissed. Per Elwood, J.: That the parties had appropriated in fulfillment of the contract, or more correctly, in substitution for the engine ordered, the engine which was inspected by the defendant and shipped to him, and there being no express warranty with respect to that particular engine, the defendant could not now say that it failed to fulfil any warranty expressed or implied contained in the original agreement.

Haug Bros. & Nellermoe v. Baade, 8 S.L.R. 126.

(§ II D—40)—REJECTION BY PURCHASER.

The sale of a system of lighting by gas-line, made on the conditions that it will give satisfaction, gives the purchaser the right

of giving notice to the vendor of his refusal to accept it, and in such case the latter is obliged to remove it. The purchaser is not obliged to give the vendor the reasons for his refusal, nor to submit them for the appreciation of the Court.

Stonehouse v. Valiquette, 47 Que. S.C. 308.

III. Rights and remedies of parties.

A. IN GENERAL.

(§ III A-50)—PROCURING GOODS UPON ORDER OF THIRD PARTY—LIABILITY FOR PRICE.

A person who buys goods from a merchant in good faith on an order signed by him scarcely legible in the name of a third party, and who receives the goods at his place of business, promises to pay for them and pays something on account, cannot afterwards refuse to pay the balance due on the ground that he has not contracted for himself.

Gauthier v. Werner, 47 Que. S.C. 400.

(§ III A-50)—SALE OF PLANT AND BUSINESS—ACTION FOR BALANCE OF PURCHASE PRICE—EVIDENCE—FAILURE OF DEFENDANTS TO PROVE MISREPRESENTATION.

Barker v. Nesbitt, 7 O.W.N. 679.

(§ III A-50)—SALE OF BUSINESS—MISREPRESENTATIONS AS TO WHAT WAS INCLUDED—EVIDENCE—COSTS.

Persofsky v. Finkelstein, 9 O.W.N. 106.

(§ III A-50)—FAILURE TO DELIVER—EVIDENCE—FINDING OF TRIAL JUDGE—APPEAL.

Canada Sand Lime Co. v. Orr Brothers, 9 O.W.N. 25.

(§ III A-51)—CONDITIONAL SALE—RIGHT TO RETURN—ACTION ON LIEN NOTES.

Where there has been no breach of warranty by the conditional vendors and there is no right to return the goods, the conditional vendee who has returned them to the premises of the conditional vendor is not thereby entitled to defend an action brought by the latter on the lien notes where the conditional vendor has not exercised its right to re-possession and has done nothing inconsistent with the right of the conditional vendee to the possession of the chattels in question.

International Harvester Co. v. Leeson, 23 D.L.R. 674, 31 W.L.R. 219.

(§ III A-51)—EFFECT OF INCORPORATION ON LIABILITY FOR PRICE.

When a person does business under a firm name and gives orders to a manufacturing company, and afterwards turns his business into a stock company under the same name, of which he becomes the manager, and continues to give orders to the same company in his own name, the latter has no personal recourse against him if it was aware of the constitution of the company and if the goods were delivered and charged in its books to and partly paid for by the company.

Rolph v. Villeneuve, 47 Que. S.C. 29.

(§ III A-51)—LATENT DEFECTS—REMEDY OF PURCHASER—REDHIBITORY ACTION.

The principle of art. 1530 C.C. respecting the delay within which the purchaser may bring the redhibitory action equally applies to the action *quantum minoris* and the action for damages in compensation for the prejudice caused by latent defects. A purchaser cannot, then, bring any one of these actions if he has been in charge of the goods purchased for several months and has finally disposed of them at a reduction. Letters or telegrams of protest or of refusal, declaring that the goods refused are defective, are insufficient; it is the action itself which should be brought with reasonable diligence.

Girard v. Dessert, 48 Que. S.C. 508.

(§ III A-57)—BREACH OF WARRANTY—DEFECTIVE TRACTION ENGINE—LIMITATION OF LIABILITY.

In an action by the seller for the price of a traction engine the buyer is entitled to counterclaim for all damages resulting from a failure of the engine to fulfil the purpose for which it is to be used, and such right is not affected by a condition in the contract against liability for secret defects. [Chapin v. Matthews, 22 D.L.R. 95, reversed.]

Chapin v. Matthews, 24 D.L.R. 457, 9 W.W.R. 301, 32 W.L.R. 663.

(§ III A-57)—MISREPRESENTATION AND WARRANTY—ACTION FOR BREACH.

Where the contract of sale of an interest in a business is silent as to warranty, evidence is nevertheless admissible to prove representations made at the time of entering into the contract and intended as a warranty to have been untrue; an action in damages as for breach of warranty upon such misrepresentations will lie whether the representations were fraudulently made or not. [Bentsen v. Taylor, [1893] 2 Q.B. 274, 280, applied.]

DeWynter v. Fulton, 23 D.L.R. 447, 8 A.L.R. 221, 7 W.W.R. 1361, 30 W.L.R. 696.

(§ III A-57)—WARRANTY OF TITLE—OUTSTANDING MORTGAGE.

A purchaser is entitled to be indemnified by the immediate seller where the title to the article sold fails by reason of an outstanding chattel mortgage.

Sharp v. Ingles, 23 D.L.R. 636, 8 W.W.R. 1325, 32 W.L.R. 150.

(§ III A-57)—INSTALLATION OF MACHINERY—BREACH OF WARRANTY—MEASURE OF DAMAGES.

Where, after the installation of a new burning plant, it fails to operate as economically as warranted at the time of the sale, and the work performed proves of no value and less economical than the old equipment, which necessitates the removal of the new plant and the re-installing of the old system, the buyer may rightfully recover all expenses incurred and damages suffered in connection with the construction of the new plant and the re-instatement of the old one, against which no counterclaim for the price

is maintainable. [*Basten v. Butter*, 7 East 479, applied.]

British American Paint Co. v. Fogh, 24 D.L.R. 61, 8 W.W.R. 1331, 32 W.L.R. 142.

(§ III A—57)—**SALE OF BOAT—MISREPRESENTATION OF AGE.**

Representing a boat to be only 8 years old, where it, in fact, appears to be 14 years old, does not establish fraud or misrepresentation in defence of an action on a promissory note given as part of the purchase price thereof.

Losier v. Mallay, 24 D.L.R. 315, 43 N.B.R. 364.

(§ III A—57)—**BREACH OF WARRANTY—REDUCTION OF PRICE—INSCRIPTION EN DROIT.**

An inscription en droit cannot be taken against a defence setting up in compensation a debt which can only be claimed by a conventional demand. One who has sued for the price of an automobile sold with warranty, and who sets up in compensation a sum of money resulting from damages suffered to the automobile through no fault of his, does not exercise a recourse for damages but a demand for reduction of the price under arts. 1511 and 1513, C.C.

Lacroix v. Giguère, 48 Que. S.C. 81.

(§ III A—59a)—**POWER OF RE-SALE—HOW EXERCISED—NOTICE OR DEMAND.**

M. bought cattle from T., leaving them in possession of T. for future delivery, and paying a deposit upon their purchase price. M. failed to take delivery on the date fixed, and upon subsequently asking for them, T. refused to give them up, and thereafter sold them to another purchaser:—Held, that as T. had not demanded from M. or notified him to take delivery of the cattle, he could not exercise a right of re-sale, and that his repudiation of the contract gave M. an immediate right of action.

Molyneux v. Traill, 9 W.W.R. 137, 32 W.L.R. 292.

B. LIEN FOR PRICE.

(§ III B—66)—**ACCEPTANCE OF NOTES—LIABILITY OF JOINT MAKER.**

Promissory notes jointly signed by father and son, which are given in payment of a threshing outfit sold to the son under an agreement signed by the father as co-purchaser, will render the latter primarily liable as a joint purchaser and not as surety.

Sawyer-Massey v. Tohms, 24 D.L.R. 724, 9 W.W.R. 210, 32 W.L.R. 472.

C. RESCISSION.

(§ III C—70)—**WHAT CONSTITUTES—REMEDIES—BREACH OF WARRANTY.**

A breach of warranty as to the quality of goods sold entitles the buyer to damages for the difference in value but not to the right of rescission; nor will the seller's dealings with the returned article in an attempt to remedy its defects amount to acts of ownership so as to operate as a rescission.

Laleune v. Fairweather, 25 D.L.R. 23, 9 W.W.R. 567, 32 W.L.R. 917.

(§ III C—70)—**RE-POSSESSION AND RE-SALE—ASSERTION OF OWNERSHIP.**

Where a vendor re-possesses an article sold under an agreement which provides for re-possession and re-sale, and acts in reference to the article in a manner not provided for in the agreement, the purchaser may treat the contract as rescinded, if the acts of the vendor amount to an assertion of unqualified ownership of the article, or if, as a result of such acts, the value of the article is depreciated.

Gartside v. Leland, 24 D.L.R. 732, 8 S.L.R. 213, 31 W.L.R. 827.

(§ III C—70)—**RE-POSSESSION AND RE-SALE—RETURN OF PAYMENTS.**

The re-possession of animals by a vendor in the exercise of his lien under a conditional sale and their subsequent re-sale subject to the ratification of the defaulting vendee, without exercising any rights of ownership over them by the vendor, does not operate as a rescission of the contract as to entitle to a return of the payments in restitution of statu quo.

Gartside v. Leland, 24 D.L.R. 732, 8 S.L.R. 213, 31 W.L.R. 827.

(§ III C—70)—**WRONGFUL CANCELLATION OF ORDER—RECOVERY BACK OF DEPOSIT.**

The person who contracts to purchase a chattel, in this case an automobile, and makes a deposit along with his contract, cannot recover the deposit upon his wrongfully assuming to cancel the order and refusing to take delivery; the money paid is no less a deposit because it is a part payment. [*Howe v. Smith*, 27 Ch.D. 89, applied; *Snell v. Brickles*, 20 D.L.R. 209, 49 Can. S.C.R. 360; *Kilmer v. B.C. Orchard Lands Co.*, 10 D.L.R. 172, [1913] A.C. 319, distinguished.]

Small v. Dominion Automobile Co., 23 D.L.R. 304, 7 O.W.N. 700.

(§ III C—70)—**WHEN REFUSED—IMPOSSIBILITY OF RESTITUTION.**

Where as part of the transaction in the sale of an automobile the seller is also required to procure a loan for the buyer to meet the purchase price, the buyer, after receiving the benefit of the loan cannot claim a rescission of the sale for misrepresentations as to concealed defects, where from the nature of the contract the parties cannot be completely restored to their original position. [*Lee v. Chapin*, 23 D.L.R. 697, affirmed.]

Lee v. Chapin, 25 D.L.R. 299, 9 A.L.R. 74, 9 W.W.R. 228, 32 W.L.R. 509.

(§ III C—70)—**BREACH OF WARRANTY—RECOVERY OF PAYMENTS.**

R. agreed to buy from M. well-smoked haddies. At the request of H., who purported to act for M., R. paid M.'s draft for the price of the fish and the C.P.R. charges for freight, in order to facilitate H. in getting the fish as speedily as possible into cold storage:—Held, that upon the haddies turn-

ing out not to be well smoked, R. was entitled to a return of the moneys paid.

Royal Fish v. Maritime Fish, 9 W.W.R. 169.

(§ III C-70)—AGREEMENT FOR PURCHASE OF VEHICLE—CANCELLATION—ACTION FOR RETURN OF DEPOSIT—COLLATERAL AGREEMENT—EVIDENCE—FINDINGS OF FACT OF TRIAL JUDGE—APPEAL.

Small v. Dominion Automobile Co., 8 O.W.N. 256.

(§ III C-72)—FRAUDULENT REPRESENTATIONS—DELAY.

A stipulation in a contract of sale that the purchaser may annul the sale within a month from the date, if the thing sold is not such as it has been represented, the sale will nevertheless be annulled by the Court, after such delay, if the purchaser has been the victim of false representations amounting to fraud.

DeSable Union v. Warren, 24 Que. K.B. 111.

(§ III C-72)—LATENT VICE OF ANIMAL AS GROUND FOR RESILIATION.

The vice of kicking in a horse, when latent, gives right to a rescission of the contract of exchange or sale between the parties.

Bibeau v. Leclerc, 47 Que. S.C. 272.

(§ III C-72)—FRAUD AND MISREPRESENTATION—SALE OF ANIMAL—EVIDENCE—FAILURE TO PROVE FRAUD.

Rogers v. Wylie, 7 O.W.N. 790.

(§ III C-72)—FRAUD AND MISREPRESENTATION—SALE OF THEATRE—FINDINGS OF FACT OF TRIAL JUDGE—RESCISSION OF CONTRACT OF SALE AND RETURN OF MONEY PAID—DEDUCTION OF RENT—ACCOUNT—REFERENCE.

Peppiatt v. Reeder, 8 O.W.N. 84, 257, 332, 526.

D. RIGHTS OF BONA FIDE PURCHASER.

(§ III D-75)—INVALID REGISTRATION OF LIEN NOTE.

A purchaser in good faith for valuable consideration obtains title to the chattel which was the subject of the sale although he had notice that the seller had given a lien note at the time that such seller bought the chattel, if such lien note was not registered as required by the Conditional Sales Act, Sask., which provides that the seller shall not be permitted to set up a right of property or right of possession under the unregistered lien note as against the sub-purchaser from the party to whom he gave possession under a conditional sale. [Moffatt v. Coulson, 19 U.C.Q.B. 341; Roff v. Krecker, 8 Man. L.R. 230, applied.]

Ferrie v. Meikle, 23 D.L.R. 269, 8 S.L.R. 161, 8 W.W.R. 336, 30 W.L.R. 913.

(§ III D-75)—PURCHASE FROM WIFE OF CONDITIONAL OWNER—FAILURE TO REGISTER LIEN NOTES—RIGHTS OF PARTIES.

The buyer of a horse from the wife of a

previous purchaser who had obtained it upon a conditional sale contract will, if he buys with the acquiescence of the conditional purchaser, be entitled to the like protection because of the failure of the conditional vendor to register his lien notes under the Lien Notes Act, Sask., as a purchaser from the husband who gave the lien notes would have been entitled to, where the purchase from the wife was carried out in good faith and for valuable consideration. [Roff v. Krecker, 8 Man. L.R. 230, referred to.]

Willie v. DeLisle, 21 D.L.R. 407, 8 S.L.R. 12, 30 W.L.R. 918.

IV. Bulk sales.

(§ IV-90)—MEANING OF "GOODS, WARES OR MERCHANDISE"—LIVERY BUSINESS.

A transfer of a livery stable, including the horses, fixtures, harness, waggons, goodwill of the business, etc., is not such a "sale or transfer of a stock of goods, wares or merchandise" as to come within the provisions of the Bulk Sales Act, B.C. 1913, ch. 101.

Brown v. McLeod, 8 W.W.R. 110.

(§ IV-90)—SALE EN BLOC—STATUTORY FORMALITIES—AFFIDAVIT OF NAMES OF CREDITORS—NON-COMPLIANCE—PRESUMPTION AS TO FRAUD—ARTS. 1569c, 1569b, 1569a, C.C.—ART. 646, C.P.Q.

Rousseau v. Heirs of A. J. Dubuc, 25 D.L.R. 854, 47 Que. S.C. 127.

(§ IV-91)—STATUTORY REQUIREMENTS—WAIVER.

When a trader is endeavouring to uphold a transaction which without the waiver of his creditors would be in plain disregard of the Bulk Sales Act, it is his duty to shew that the statute does not apply to the transaction by the clearest proof of such waiver as the statute calls for. (Semble): A waiver under the Bulk Sales Act, to be effective, must be given before the sale is completed. [Fairchild v. Myrum, 1 A.L.R. 472, referred to.]

Walter v. Leduc, 8 W.W.R. 360.

SALVAGE.

See also Seamen; Admiralty; Shipping.

(§ I-3)—DERELICT—ABANDONMENT OF VESSEL.

A vessel cannot be derelict before abandonment; derelict is a term applied to a thing abandoned and deserted at sea by those in charge of it without hope on their part of recovering it and without any intention of returning to it.

Humboldt v. The Escort, 30 W.L.R. 911, 8 W.W.R. 194.

(§ I-4)—RELATIVE LIABILITY OF SHIP AND CARGO.

Where no specific agreement is made for a sum certain, the rule in a salvage action is that the interests in the ship and cargo are only severally liable, each for its pro-

portionate share of the salvage remuneration. [The Mary Pleasants, Swab. 224; The Pyrrennee, Br. & L. 189; The Raisby, 10 P.D. 114, referred to.]

Peninsular Tug & Towing Co. v. Stephe, 15 Can. Ex. 124.

(§ I—4)—**SALVAGE OR TOWAGE—APPRECIABLE RISK—EXCESSIVE CLAIM—COSTS.**

The B.B., a gasoline launch of some 60 feet in length, became disabled, owing to lack of gasoline, when approaching in the daytime the entrance of the First Narrows in Burrard Inlet. There was a fresh breeze and a somewhat rough sea prevailing at the time, but these conditions were not sufficient to make the position of the launch perilous, although the passengers on board (numbering some 15 or 16) were calling for help. The master of the Prince George, a passenger steamship of 3,379 gross tonnage and 320 feet in length, belonging to plaintiff company, heard the calls for help and went to the launch's assistance, taking her in tow and bringing her safely to port. The Prince George was not delayed more than half an hour by rendering this service, but there was an element of appreciable risk incurred by her master, in that his ship was carried by the tide close to the shore during her manoeuvres in taking the launch in tow:—Held, that the service was a salvage service and not one of towage merely, and that an award of \$500 should be made. Inasmuch as the plaintiff's claim was excessive, bail having to be furnished by the defendant in the sum of \$2,000, the costs of furnishing the same were given to the defendant, although in other respects the costs were ordered to follow the event. [Vermont SS. Company v. The Abbey Palmer, 8 Can. Ex. 463, referred to.]

Grand Trunk Pac. Coast SS. Co. v. Gasolene Launch B.B., 15 Can. Ex. 389.

SANITY.

See Incompetent Persons.

As affecting criminal intent, see Criminal Law.

SATISFACTION.

Of mortgage, see Mortgage; Chattel Mortgage.

Of judgment, see Judgment, V; Execution.

SCHEDULE.

In assignment, for creditors, see Assignment for Creditors.

SCHOOLS.

I. IN GENERAL.

- A. Legislative power; constitutionality of statutes.
- B. Admission; attendance; tuition.
- C. Health regulations.
- D. Suspension; control over pupil.

II. TEACHERS.

- A. Employment; qualification.
- B. Compensation; salary.

C. Removal; dismissal.

D. Liability of teacher.

III. OFFICERS AND ELECTIONS.

A. Officers.

B. Elections.

IV. DISTRICTS AND PROPERTY; SCHOOL TAXES.

V. BOOKS; INSTRUCTIONS.

Restraining invalid elections at colleges, see Injunction.

Constitutionality of statutes affecting, see Constitutional Law.

Annotation.

Denominational privileges; constitutional guarantees: 24 D.L.R. 492.

I. In general.

C. HEALTH REGULATION.

(§ I C—16) — **VACCINATION — POWERS OF HEALTH BOARD.**

A regulation by a Provincial Board of Health prohibiting, under the Public Health Act (Alta.), admittance of a pupil to any school unless he produces evidence of successful vaccination, is, as respecting the mode of enforcement, in conflict with the Truancy Act providing for compulsory attendance, nor within the excusable exceptions enumerated therein, and, therefore, ultra vires.

Clowes v. Edmonton School Board, 25 D.L.R. 449, 9 A.L.R. 106, 9 W.W.R. 372, 32 W.L.R. 733.

II. Teachers.

(See previous Annual Digests.)

III. Officers and Elections.

A. OFFICERS.

(§ III A—55)—**POWERS OF SCHOOL BOARD—SELECTION OF TEACHERS.**

Resolutions of a "separate school" board purporting to delegate to the chairman of the board power to discharge, select and engage teachers, are ultra vires.

Mackell v. Ottawa Separate School Trustees, 24 D.L.R. 475, 34 O.L.R. 335, 8 O.W.N. 596.

(§ III A—55)—**DELEGATION OF AUTHORITY BY SUPERINTENDENT AS TO HEARING CHARGES—POWER AS TO.**

The superintendent of public instruction has the right to delegate to a Judge of the Superior Court the power conferred on him by art. 2536, R.S.Q. 1909, to have a hearing upon certain accusations made against one of the members of the Catholic School Commissioners of Montreal.

Therrien v. Mercier et al., 24 Que. K.B. 352.

(§ III A—55) — **SCHOOL COMMISSIONERS — CHOICE OF SCHOOL SITE—MODE OF REVIEW—CHOSE JUDGE.**

There is no other remedy in law to have quashed for illegality a resolution of the

school commissioners deciding to acquire a certain land for a schoolhouse than the appeal given to the Circuit Court by R.S.Q. 1909, art. 2981. The judgment of the Circuit Court upon such appeal is final, and is chose jugee between the parties. Any subsequent action in the Superior Court to have such resolution quashed, and an application for an injunction to prevent the commissioners from carrying out these resolutions, cannot be maintained because it would constitute an appeal from a judgment of the Circuit Court when the law refuses it, and because the Superior Court has no jurisdiction to decide such application.

Paquin v. School Com'rs of Ste. Genevieve, 47 Que. S.C. 218.

IV. Districts and property; school taxes.

(§ IV—72)—SCHOOL DISTRICTS—DEBENTURES—VALIDITY—SEALING.

The effect of sec. 219, sub-sec. (g), of the Public School Act, Man., is that no matter what defects or irregularities existed in the formation of a school district, debentures of a consolidated school district signed by the Provincial Secretary and sealed with the seal of the province of Manitoba, such debentures thereafter constitute an indefeasible security in the hands of an innocent purchaser; and after such sale of debentures a ratepayer is too late in bringing action against the new school district and the municipalities concerned for a declaration setting aside the consolidation, even with a reservation safeguarding the validity of the debentures.

Molison v. Woodlands, 21 D.L.R. 19, 7 W.W.R. 1315, 30 W.L.R. 634.

[Affirmed in 25 D.L.R. 30, 9 W.W.R. 183, 32 W.L.R. 452.]

(§ IV—72)—CONSOLIDATION OF SCHOOL DISTRICTS—VALIDITY OF DEBENTURES.

Section 219 (g) of the Public School Act providing that the signature of the Provincial Secretary and the Seal of the Province affixed to school debentures shall be "conclusive evidence that such corporation has been legally formed," precludes an attack as to the validity of the various proceedings leading up to the consolidation of a school district, and constitutes the debentures thereof indefeasible securities in the hands of their holders. [*Molison v. Woodlands*, 21 D.L.R. 19, 7 W.W.R. 1315, 30 W.L.R. 634, affirmed.]

Molison v. Woodlands, 25 D.L.R. 30, 25 Man. L.R. 634, 9 W.W.R. 183, 32 W.L.R. 452.

(§ IV—74)—COMPANY TAX—APPORTIONMENT—SEPARATE SCHOOLS.

A separate school board cannot obtain a share of the school taxes of a company by notice under sec. 93a of the School Assessment Act, Sask., as amended 1912-13, Sask., ch. 36, sec. 3, requiring the company to apportion school taxes between public and separate schools according to the religious belief of the shareholders, and the failure of

the company to make any apportionment, if the company is not shown to have any shareholders of the religious belief to which the separate school pertains, for (per Davies and Duff, JJ.), sec. 93a, if constitutional, applies only to companies who could apportion under sec. 93, and (per Idington, J., concurring in the result), sec. 93a is unconstitutional and ultra vires of the Saskatchewan Legislature. [*Regina Public School v. Gratton Separate School*, 18 D.L.R. 571, reversed.]

Regina Public School v. Gratton Separate School, 21 D.L.R. 162, 50 Can. S.C.R. 589, 7 W.W.R. 1248, 8 W.W.R. 156, 31 W.L.R. 82.

(§ IV—74)—ASSESSMENT AND TAXES—LIABILITY FOR SCHOOL TAXES.

Stamford v. Ontario Power Co., 7 O.W.N. 646, 8 O.W.N. 241.

[Affirmed by Privy Council, Feb. 2, 1916.]

V. Books; instructions.

(§ V—84)—SEPARATE DENOMINATIONAL SCHOOLS—USE OF FRENCH LANGUAGE—RELIGIOUS TEACHINGS—BREACH OF DEPARTMENTAL REGULATIONS—INJUNCTION.

McDonald v. Lancaster Separate School Trustees, 24 D.L.R. 868, 34 O.L.R. 346, 8 O.W.N. 598, affirming 31 O.L.R. 360.

SCIRE FACIAS.

See Judgment, VI.

Renewal of executions, see Execution.

SEAL.

Effect of, on contract, see Contracts.

Limitation of actions on sealed instruments, see Limitations of Actions.

Formal requisites of company contracts, see Corporations and Companies.

SEAMEN.

Jurisdiction over, see Admiralty; Shipping.

For salvage services, see Salvage.

(§ I—4)—WAGES—CONTRACT—"LAY" AND "BONUS."

A sailor who engages on a whaling voyage and is to receive a certain sum per month "and lay" (the term "lay" being set out in the ship's articles as an apportionment to the officers and crew of various amounts for various kinds of whales that are taken by the ship), may include the sum due him under "the lay" in an action for wages against the ship; the sum so due is not subject to forfeiture under a clause in the articles providing for the forfeiture of a "bonus" in case the seaman leaves his employment before the final termination of the whaling season.

Farrell v. The "White," 20 B.C.R. 576.

(§ I—4)—WAGES—JURISDICTIONAL AMOUNT—EXCHEQUER COURT.

The effect of sec. 191 of the Canada Shipping Act (R.S.C. ch. 113) is to require the

plaintiff to recover at least the minimum amount of wages specified, and the Exchequer Court has no jurisdiction where the amount bona fide claimed is in excess of the minimum, but the amount recovered is less. [The Harriet (1861), Lush 285, and Gagnon v. The Savoy, 9 Ex. 238, followed.]

Cowan v. The St. Alice, 32 W.L.R. 17, 8 W.W.R. 1256.

SEARCH AND SEIZURE.

See also Levy and Seizure.

(§ 1—2)—INFORMATION FOR SEARCH WARRANT.

A search warrant will be quashed if the information for same, taken under Cr. Code, sec. 629, fails to allege any criminal offence.

Rex v. Frain, 24 Can. Cr. Cas. 389, 32 W.L.R. 387.

(§ 1—2)—RECITAL OF OFFENCE IN SEARCH WARRANT.

A search warrant issued under the authority of Cr. Code, sec. 629, is invalid if it does not allege a criminal offence.

Rex v. Frain, 24 Can. Cr. Cas. 389, 32 W.L.R. 387.

(§ 1—2)—TO ALLEGE CAUSE OF SUSPICION.

A search warrant will be quashed if the information for same taken under Cr. Code, sec. 629, fails to allege the causes of suspicion as required by Code form No. 1. [R. v. Kehr, 11 Can. Cr. Cas. 52, 11 O.L.R. 517, applied.]

Rex v. Frain, 24 Can. Cr. Cas. 389, 32 W.L.R. 387.

SECOND JEOPARDY.

See Criminal Law, II.

SECOND OFFENCE.

Punishment for, see Criminal Law; Summary Conviction; Intoxicating Liquors.

SECONDARY EVIDENCE.

See Evidence.

SECRET COMMISSIONS.

(§ 1—10)—FALSE STATEMENT IN WRITING—COLLUSIVE FIXING OF PRICE BY EMPLOYEE.

Where by collusion between the seller and the buyer's employee whose duty it was to fix the prices at which the buyer would purchase, such prices were systematically doubled or trebled over the ordinary rates, and these prices were re-stated in the seller's account copied from the buyer's order form, and the employee so dishonestly crediting fictitious prices was receiving cash presents from the seller as a share or bribe for the continuance of the fraud, charges under the Secret Commissions Act, Can. 1909, are sustainable against the seller, not only in respect of the corrupt gifts, but for issuing a statement of account false and erroneous in a material particular intended to mislead, and also in respect of the fraudulent order form as to his privity to the use of same to

deceive the buyer. [R. v. Rabinovitch (No. 1), 21 D.L.R. 600, 23 Can. Cr. Cas. 496, 30 W.L.R. 609, affirmed on this point.]

Rex v. Rabinovitch and Clingman (No. 2), 24 Can. Cr. Cas. 350, 25 Man. L.R. 341.

SECURITY.

For costs, see Costs, I.

On appeal, see Appeal.

SEDITION.

(§ 1—1)—SEDITIONOUS INTENT—OFFENSIVE EXPRESSIONS OF DISLIKE TOWARDS BRITISH "SUBJECTS."

It is always open to a Judge or a jury to infer a seditious intent from words spoken and the circumstances under which they are spoken. One of the forms of seditious intent is an intention to raise discontent or disaffection among His Majesty's subjects or to promote feelings of ill-will and hostility between different classes of His Majesty's subjects. To be a "subject" within this definition it is not necessary to be a natural born or naturalized British subject. The term will include all the persons subject to His Majesty's laws, whether included in the term British subject in its narrower acceptance or not. Very offensive expressions of dislike towards Englishmen purely by themselves cannot be considered as seditious (per Stuart, J.).

Rex v. Felton, 9 W.W.R. 819, 25 Can. Cr. Cas.

SEDUCTION.

I. CIVIL LIABILITY.

II. CRIMINAL LIABILITY.

I. Civil liability.

(See previous Annual Digests.)

II. Criminal liability.

(§ 11—5)—SEDUCTION UNDER PROMISE OF MARRIAGE OF GIRL UNDER TWENTY-ONE.

Apart from any question of corroboration, a promise of marriage cannot be predicated upon a mere question by the accused to the complainant asking if she loved him enough to live with him as he had money enough for two and her assent by answering "yes," so as to support a charge under Cr. Code sec. 212 of seduction under promise of marriage.

Rex v. Spray, 24 Can. Cr. Cas. 152, 20 B.C.R. 147.

(§ 11—5)—PROOF OF AGE.

Upon indictment of the prisoner, under sec. 212 of the Criminal Code, for an offence committed upon a woman under twenty-one, it was held, that, the woman's mother being dead, the evidence of herself and of a woman with whom she had gone to live when quite young, was admissible to prove her age. [Regina v. Cox, 1 Q.B. 179, followed.] The omission to include sec. 212 of the Code in the provision (sec. 984), which makes it

competent for the Judge or jury to form their own conclusions as to the age of a person from his appearance, has not the effect of rendering this class of evidence inadmissible.

Rex v. Spera, 34 O.L.R. 539, 9 O.W.N. 113, 25 Can. Cr. Cas.

(§ II—7)—PREVIOUS CHASTE CHARACTER.

Where the girl had been seduced by the accused in a foreign country and came to Canada with him, the resumption of illicit intercourse in Canada under promise of marriage will not support a charge under Cr. Code, sec. 212, of seducing a female of "previously chaste character" unless there is evidence that between the two acts of seduction there was such conduct and behaviour on her part as to imply reform and self-rehabilitation in chastity. [R. v. Loughheed, 8 Can. Cr. Cas. 184, approved.]

Rex v. Hauberg, 24 Can. Cr. Cas. 297, 8 S.L.R. 239, 8 W.W.R. 1130, 31 W.L.R. 779.

SEIZURE.

See Levy and Seizure.

SELF DEFENCE.

In committing assault, see Assault and Battery.

SENTENCE.

For crime, see Criminal Law, IV.; Summary Convictions.

SEPARATE ESTATE.

Of married woman, see Husband and Wife.

SEPARATE MAINTENANCE.

Suit for, see Divorce and Separation.

SEQUESTRATION.

Enforcement of judgment by, see Judgment; Execution.

Annotation.

The writ of sequestration, its origin and scope: 14 D.L.R. 855.

(§ I—1)—APPOINTMENT OF SEQUESTRATOR—GOODS IN CUSTODIA LEGIS—SEVERAL CLAIMANTS.

A sequestrator may be appointed even when the goods are already in the hands of justice. So where a person claiming to be the owner of certain goods violently takes possession of them during the night and another person, for the same reason, attaches the same goods, a sequestrator may be properly appointed.

Cohen v. Edelstone, 24 Que. K.B. 145.

SERVANTS.

See Master and Servant.

SERVICE.

Construction of contract for services, implied contract to pay for, see Contracts.

Of process, see Writ and Process.
Of motions, see Motions and Orders.

SET-OFF AND COUNTERCLAIM.

I. OF WHAT DEMANDS.

- A. In general.
- B. Recoupment.
- C. Mutuality of claims.
- D. As against transferee or assignee.
- E. By or against decedent's estate.
- F. Effect of insolvency.

II. OF AND AGAINST JUDGMENTS.

In sale of goods, see Sales.

In sale of lands, see Vendor and Purchaser.

In action on contract, see Contracts.

I. Of what demands.

A. IN GENERAL.

(§ I A—1)—ACCRUAL OF RIGHT AFTER ACTION.

A defence by way of set-off, which accrued after the writ was issued in the original action, cannot be set up as an answer to such action.

Windsor v. Young, 24 D.L.R. 652, 43 N.B.R. 313.

(§ I A—2)—WHEN REFUSED—WANT OF PARTICULARS—PERFORMANCE OF CONTRACT.

The amount of damages assessed on a counterclaim for breach of contract will not be deducted from the amount awarded the plaintiff, where no particulars are furnished and no proof of damage offered to support the counterclaim, and where the jury has also found that the defendant had accepted what the plaintiff did as a fulfilment of the contract.

Blue v. Miller, 24 D.L.R. 852, 43 N.B.R. 307.

(§ I A—2)—ACTION ON NOTE AND CHEQUE—COUNTERCLAIM FOR DAMAGE FROM IMPROPER PERFORMANCE.

To a demand based upon a note and a cheque given in payment of the price of construction and repairs damages resulting from the poor execution of the work cannot be set up in compensation.

Peloquin v. Clermont, 47 Que. S.C. 403.

(§ I A—3)—ACTION FOR CONVERSION—TRESPASS—LIBEL AND SLANDER—COUNTERCLAIM FOR BALANCE UNDER CHATTEL MORTGAGE.

This was an action for damages for goods and chattels wrongfully taken, for trespass and for libel and slander. The defendant counterclaimed for damages for non-delivery of hay according to contract, balance due under chattel mortgage and the balance of an account. The jury found a verdict for the plaintiff on the libel count; the plaintiff was non-suited in regard to his claim for slander and other claims. Judgment was given for the defendant on his counterclaim for damages in the amount of the balance due under the chattel mortgage, also judgment for the balance of account due.

Judgment was accordingly given to both parties and the costs were adjusted, following *Shrapnel v. Lang*, 20 Q.B.D. 334, and *Atlas Metal Company v. Miller*, [1898] 2 Q.B. 500.

L'Esperance v. Mollot, 31 W.L.R. 503.

C. MUTUALITY OF CLAIMS.

(§ I C—15)—EXCHANGE OF LANDS—ENFORCEMENT—COUNTERCLAIM FOR DAMAGES.

An agreement for the exchange of lands is not unilateral, but mutually dependent on reciprocal acts, which will disentitle a party to counterclaim for damages if he is unable to carry out his part of the contract by reason of a defect in the title.

Williams v. Black, 23 D.L.R. 287, 8 W.W.R. 1139, 31 W.L.R. 844.

D. AS AGAINST TRANSFEREE OR ASSIGNEE.

(§ I D—20) — TRUSTEE AND CESTUI QUE TRUST.

There may be a set-off against the trustee of a debt due from the cestui que trust in respect of the fund to which the latter would be entitled on its coming into the trustee's hands. (Per *Irving and Martin, JJ.*) [*Bankes v. Jarvis*, [1903] 1 K.B. 549, 72 L.J.K.B. 267, followed.]

Royal Trust v. Holden, 22 D.L.R. 660, 21 B.C.R. 185, 8 W.W.R. 500.

II. Of and against judgments.

(See previous Annual Digests.)

SETTLEMENT.

Of decedent's estate, see *Executors and Administrators*, IV.

See also *Compromise and Settlement*.

SEWERS.

See *Drains and Sewers*; *Municipal Corporations*.

SHAREHOLDERS.

See *Corporations and Companies*.

SHERIFF.

See *Levy and Seizure*; *Execution*; *Interpleader*.

Liability for contempt for failure to execute writ, see *Contempt*.

SHIPPING.

I. IN GENERAL; LIMITATION OF LIABILITY.

II. OWNERSHIP AND EMPLOYMENT OF VESSELS.

III. POWERS AND LIABILITY OF MASTER.

IV. OFFENCES UNDER SHIPPING LAWS.

Vessel as common carrier, see *Carriers*.

Collision between vessels, see *Collision*.

As to marine insurance, see *Insurance*.

As to salvage, see *Salvage*.

Obstruction of floatable streams, see *Waters*.

Rules of the road in navigation, see *Negligence*; *Waters*.

Procedure in Admiralty cases, see *Admiralty*.

As to seamen's lien, see *Liens*; *Seamen*.

Bill of sale of ship, see *Bills of Sale*.

Annotations.

Collision of ships: 11 D.L.R. 95.

Contract of towage; Duties and liabilities of tug-owner: 4 D.L.R. 13.

Liability of a ship or its owner for necessities: 1 D.L.R. 450.

I. In general; limitation of liability.

(§ I—1)—NEGLIGENCE—SKILL OF SEAMEN.

While the law requires that a seaman should exhibit ordinary presence of mind and ordinary skill, an act or omission, in a moment of great peril, which contributes to a collision is not actionable negligence, although it turned out to have been the wrong thing to do, if it represented his best judgment at the moment of the emergency.

Donaldson v. Acadia Sugar Refining Co., 21 D.L.R. 217, 48 N.S.R. 451.

(§ I—1)—NEGLIGENT NAVIGATION—GRATUITOUS PASSENGER.

Negligence of a gross description must be proved in an action for damages founded on negligent navigation resulting in injury to a passenger carried gratuitously in a motor boat. [*Moffatt v. Bateman*, L.R. 3 P.C. 115; *Nightingale v. Union Colliery*, 35 Can. S.C.R. 67, referred to.]

Donaldson v. Acadia Sugar Refining Co., 21 D.L.R. 217, 48 N.S.R. 451.

(§ I—1)—WATER CARRIAGE OF GOODS ACT—WHEN APPLICABLE.

The *Water Carriage of Goods Act*, 1910 (Dom.), does not apply in Admiralty cases, except when the vessel sails from a Canadian port. Quaere: Has a party who has not, at the time of the happening of the event upon which action is based, paid for the goods lost or taken delivery of them, the right to maintain an action in respect of their loss?

Lannon v. S.S. Porter, 15 Can. Ex. 126.

(§ I—2)—REGULATION OF PILOTAGE—REVOCA- TION OF LICENSE.

The granting and withdrawal of a pilot's license by the local pilotage authority under the *Canada Shipping Act*, R.S.C. 1906, ch. 113, is a quasi-judicial act, and no action will lie for its error in proceeding ex parte on cancelling a license unless malice is alleged and proved. [*Harman v. Tappenden*, 1 East 555; *Drewe v. Coulton*, 1 East 563 n, referred to.]

McGillivray v. Kimber, 23 D.L.R. 189, 48 N.S.R. 280.

[Reversed in 52 Can. S.C.R. 146, 26 D.L.R. 164.]

(§ I—2)—PILOTAGE AUTHORITY — POWER TO CANCEL LICENSE—LIABILITY FOR ILLEGAL CANCELLATION.

The pilotage authority in a pilotage district of Canada has not absolute and arbitrary power to cancel a pilot's license, but can only do so after complaint and inquiry and proof on oath of incapacity. If a pilotage authority, by resolution alone, without complaint, notice or investigation, declares a pilot to be dismissed "for neglect and incapacity" and thus prevents him from performing a pilot's duties, inasmuch as it failed to observe the statutory requirements respecting the proceedings for such dismissal it has not exercised judicial functions and is not protected from liability to an action by the pilot for damages. Fitzpatrick, C.J., and Davies, J., dissenting. Per Duff, J.: A by-law of a pilotage authority purporting to provide for the forfeiture of pilots' licenses for incapacity could only have the effect, if at all, subject to the condition exacted by 433 (j) of the Shipping Act that such incapacity should be "proved on oath before the pilotage authority" and a resolution of a pilotage authority pretending to dismiss a licensed pilot for incapacity without such proof on oath was legally inoperative; but as the resolution was intended to have and had the effect of preventing the pilot exercising his calling and since it was an act without justification or excuse it was actionable within the principle laid down by Bowen, L.J., in *Mogul Steamship Co. v. McGregor*, 23 Q.B.D. 598. Per Duff, J.: Sec. 433 (e) of the Shipping Act does not empower a pilotage authority to limit the term of a pilot's license to a period of one year.

McGillivray v. Kimber, 52 Can. S.C.R. 146, 26 D.L.R., 164, reversing 23 D.L.R. 189, 48 N.S.R. 280.

(§ I—3)—COLLISION — RULES OF ROAD — NEGLIGENCE.

In case of a collision between vessels, when damage has accrued, the responsibility lies upon the ship guilty of negligent navigation in failing to observe the rules which should have governed her course and speed.

Starke v. S.S. Mack, 15 Can. Ex. 118.

II. Ownership and employment of vessels.

(§ II—5) — TUG AND BARGE — COMMON OWNERSHIP — COLLISION — LIABILITY OF SHIPS.

A tug having in tow a barge being engaged in the business of their common owner, and controlled by the officers and crew of the tug are regarded as one ship and each liable for the consequences of a collision by the tug with another barge. [Ont. Gravel Freighting Co. v. The "A. L. Smith," 22 D.L.R. 488, 15 Can. Ex. 111, affirmed.]

"A. L. Smith" and "Chinook" v. Ont. Gravel Freighting Co., 23 D.L.R. 491, 51 Can. S.C.R. 39.

III. Powers and liability of master.

(§ III—10)—ILLNESS OF SEAMAN—MEDICAL ATTENDANCE—SERVICE EX JURIS.

Although a vessel and its owners are under obligation to bear the expenses of the illness of a seaman in the services of the ship in addition to his wages while ill, at least so long as the voyage is continued, there is no implied contract in respect of the physician's charges between the shipowner and the physician called in by the seaman to attend him while visiting in port during the employment; and leave under N.S. Order 11, sec. 1, to serve process out of the jurisdiction should be refused the physician suing the shipowner for the account where there was neither an express contract by the latter for the services rendered the seaman, nor circumstances from which a direct contract to pay could be implied. [The "Osceola," 189 U.S.R. 175; The "Iroquois," 194 U.S.R. 240, followed.]

Melanson v. Gorton Pew Fisheries Co., 23 D.L.R. 307, 48 N.S.R. 502.

IV. Offences under shipping laws.

(See previous Annual Digests.)

SHIPS.

Collision, see Collision; Shipping; Admiralty; Negligence.

SIGNAL.

To or by driver of automobile, see Automobiles.

Duty as to, at highway crossing, see Railways; Carriers; Street Railways.

Warnings to employees, see Master and Servant.

SIGNATURE.

As affecting notes, see Bills and Notes; Cheques.

As to other instruments, see Deeds; Wills; Mortgages; Chattel Mortgages; Bills of Sale.

Authority to sign for company, see Corporations and Companies.

SITUS.

For purposes of garnishment, see Garnishment.

For purposes of taxation, see Taxes.

See also Conflict of Laws.

SLANDER.

See Libel and Slander.

SMOKE.

As nuisance, see Nuisances.

SOLICITORS.

I. RIGHT TO PRACTISE.

- A. Admission.
- B. Disbarment.
- C. License.

II. RELATION TO CLIENT.

- A. In general; liability.
- B. Authority.
- C. Compensation; lien.
- D. Summary proceedings.

III. REMEDIES AGAINST; MOTIONS.

As to taxing costs, see Costs.

Annotation.

Acting for two clients with adverse interests: 5 D.L.R. 22.

I. Right to practise.**A. ADMISSION.****(§ I A—6)—WOMEN—DISCRETION OF BOARD OF EXAMINERS.**

The power given to the council of each section of the Bar of the province of Quebec to appoint examiners is not a power delegated to them by the general corporation, but is a distinct power which appertains specially and exclusively to each of them. The Board of Examiners for the admission of candidates to the study or practice of the law must be guided in this decision by the principles of the law, and they have no absolute discretion to exert. A person of the female sex is not included within the purview of the Bar Act of the province of Quebec, and cannot be admitted either to the study of the law nor to the practice of the legal profession. A married woman could not be admitted to the practice of the law as a member of the Bar without the authorization of her husband or of a Judge. *Langstaff v. Bar of Quebec*, 47 Que. S.C. 131.

B. DISBARMENT.**(§ I B—10) — SUSPENSION — GROUNDS — FAILURE TO TURN OVER COLLECTIONS.**

Re Solicitor, 23 D.L.R. 887, 32 W.L.R. 60.

(§ I B—12)—STRIKING OFF ROLLS—PROVINCE OF COURT.

A Court, in dealing with the moral fitness of solicitors to retain them on the Roll, is merely a Court of discipline specially charged with the duty of guarding the honour of the legal profession and judging, not the legal rights, but the moral character of the individual, and is not bound by previous decisions. [Re Knox, 20 D.L.R. 546, 7 A.L.R. 409, referred to.]

Re Solicitor, 24 D.L.R. 443, 9 W.W.R. 480, 32 W.L.R. 705.

(§ I B—14)—MISAPPROPRIATION OF FUNDS—SUSPENSION UPON PAYMENT—COMPROMISE.

A compromise with his clients on a percentage basis is a sufficient compliance with an order of Court suspending the disenrollment of a solicitor upon his payment of the claims misappropriated in another jurisdiction.

Re Solicitor, 24 D.L.R. 443, 9 W.W.R. 480, 32 W.L.R. 705.

[See 20 D.L.R. 546, 7 A.L.R. 409.]

II. Relation to client.**A. IN GENERAL; LIABILITY.****(§ II A—20)—NEGLECT OF DUTY.**

The burden of proving negligence is primarily upon the plaintiff suing a solicitor for neglect of duty, but when once established it is for the solicitor to prove that the client was not injured by it. [Gould v. Blanchard, 29 N.S.R. 361; Nocton v. Ashburton, [1914] A.C. 932; Whiteman v. Hawkins, 4 C.P.D. 13, referred to.]

Marriott v. Martin, 21 D.L.R. 463, 21 B.C.R. 161, 7 W.W.R. 1291, 30 W.L.R. 899.

(§ II A—20)—SALE OF INDIAN LANDS—SHARING COMMISSIONS.

Held, upon the facts, that an agreement to share an agency commission upon the sale of lands in an Indian Reserve, made with a solicitor by a client, was enforceable.

Cole v. Read, 52 Can. S.C.R. 176, 9 W.W.R. 1137, affirming 22 D.L.R. 686, 20 B.C.R. 365.

(§ II A—22)—DEFECTIVE DRAFTSMANSHIP — FAILURE TO PROVIDE ANNUAL PAYMENT OF INTEREST.

A solicitor, who is retained to draft a mortgage, is responsible for damages resulting to his client in consequence of his failure to include in the instrument a sufficient provision for the yearly payment of interest thereon. [Whiteman v. Hawkins, 4 C.P.D. 13, applied.]

Finkbeiner v. Yeo, 25 D.L.R. 673, 9 W.W.R. 891.

B. AUTHORITY.**(§ II B—25)—AUTHORITY TO SUBSTITUTE COUNSEL—DISAVOWAL.**

A contract between an attorney and his client is a mandate of a special nature and differs from the ordinary principles of a mandate, in that it is presumed to exist and that the client can decline responsibility for what is done in his name only by disavowal. Thus, when an attorney specially retained in a case is replaced at the hearing by a colleague, the client cannot refuse to pay him the costs of the cause without disavowal, even though he denied at the hearing that the substituted attorney represented him.

Pélissier v. Houle, 48 Que. S.C. 341.

(§ II B—26)—AUTHORITY TO SETTLE ACTION—DISAVOWAL.

One who, having a claim for damages in consequence of an accident, entrusts his cause to an attorney with instructions to effect a settlement of it the best he could without action, not wishing to take the risk of having to pay the costs, cannot disavow the authority of his attorney if the latter presents a petition for authority to sue under the Workmen's Compensation Act and afterwards settles the case for the costs only. It is essential, in the action in disavowal, for the client to prove that the act of which he complains works him a preju-

dice. On default of allegation and proof for this purpose, the action will be dismissed.

Fontaine v. Cabana, 48 Que. S.C. 230.

C. COMPENSATION; LIEN.

(§ II C 1—30)—TAXATION OF COSTS.

In respect of a charge made in a solicitor and client bill for a service which by the tariff of costs is to be fixed in the discretion of the taxing officer, testimony of other solicitors practising in the same locality is not admissible to prove what would be a fair and usual charge for the service in question, but the taxing officer is to exercise his own discretion in the matter. [Howard v. Burrows, 7 Man. L.R. 181, distinguished.]

Re Philipps & Whitla, 21 D.L.R. 42, 25 Man. L.R. 173, 7 W.W.R. 1019, 30 W.L.R. 360.

(§ II C 1—30)—FEES — TAXATION—APPEAL FROM.

Where an appeal from a taxation between solicitor and client has been taken to the Court of Appeal, which Court remits the matter to the taxing officer, with directions, the right of appeal still remains from the new certificate or report of the taxing officer following the rehearing of the matter before him. [Turnbull v. Janson, 3 C.P.D. 264, referred to.]

Re Philipps & Whitla, 21 D.L.R. 42, 25 Man. L.R. 173, 7 W.W.R. 1019, 30 W.L.R. 360.

(§ II C 1—30)—COSTS — SECRET COLLUSIVE SETTLEMENT—POWER OF COURT.

Where the plaintiff and defendant make a settlement of the matter in litigation behind the back of the plaintiff's solicitor, and this is done collusively with the object of depriving the plaintiff's solicitor of his costs, the Court may, on the latter's application, order the defendant to pay such costs in full; and such liability is not limited by the amount of the collusive settlement between the parties. [Brunsdon v. Allard, 2 E. & E. 19; Price v. Crouch, 60 L.J.Q.B. 767; Murietta v. South American Co., 62 L.J.Q.B. 396; Re Margetson and Jones, [1897] 2 Ch. 314; Morgan v. Holland, 7 P.R. (Ont.) 74, referred to.]

Dicarlo v. McLean, 21 D.L.R. 676, 33 O.L.R. 231, 8 O.W.N. 27, 279.

(§ II C 1—30)—TARIFF OF FEES—VALUE OF ADVOCATE'S SERVICES.

The advocates' tariff of fees is a reasonable estimation of the value of the services of an advocate, and there is a presumption that it shall apply in ordinary cases, but this presumption may be rebutted by shewing that the case was one of unusual or unexpected importance or duration, requiring special knowledge and preparation, and the advocate is entitled to recover the value of his services, taking into consideration the amount involved.

Duff v. Upton, 25 D.L.R. 466, 48 Que. S.C. 503.

(§ II C 1—30) — TAXATION OF SOLICITOR'S BILL—EXAMINATION AS TO MEANS.

This was a matter wherein the clients had applied under the Legal Professions Act to tax a solicitor's bill. This bill had been taxed, and, on appeal, the taxation was fixed at \$577 odd. Afterwards judgment was entered, and Hunter, C.J., on application, directed an examination of the clients in aid of judgment. In this order directing the examination it read that the clients were to disclose their property, means, etc., of paying the judgment without mentioning the fact that they were trustees, and this order had never been appealed against. On the examination of the client, he refused, on advice of his counsel, to answer any questions except such as related to the trust estate, and this motion was made to compel him to attend at his own expense and answer the questions as regards his property and means of paying this judgment. Murphy, J., held that the order, not having been appealed against, settled the question of liability, and that the clients were personally responsible to the solicitor, but, outside of this, he was of the opinion that, under the authorities, the clients were personally responsible to the solicitor, citing Official Manager, G.T.R. v. Brodie, 22 L.J.Ch. 514; 3 De G. M. & G. 146; Muir v. Glasgow Bank (1879), 4 A.C. 337.

Steers v. Szameitat, 8 W.W.R. 1081.

(§ II C 1—30)—INCREASED COUNSEL FEE — REFUSAL OF.

An application for increased counsel fee will be refused; rules 222 and 226 give the Court power to reduce fees, but not to increase them.

Hewitt v. The "Skeena," 20 B.C.R. 481.

(§ II C 1—30)—CLAIM FOR SERVICES—QUANTUM MERUIT—TARIFF.

According to the actual condition of the jurisprudence, an attorney has a right to claim from his client the value of his professional services as established by evidence, and not by the tariff, which has application only for determination of the amount that the party condemned should pay to the attorneys of his opponent.

Loranger v. Denis Advertising Signs, 48 Que. S.C. 19.

(§ II C 1—30)—TARIFF OF ATTORNEY'S FEES —CHARGE FOR LETTER.

An attorney has a right to the fee established by art. 82 of the tariff of fees to attorneys for having written a letter to a debtor at the demand of the creditor who can refuse to accept the amount of the debt if these fees are not paid at the same time. In such case he should bring his action for the amount of the debt only, as the fees for the letter are not exigible when there is an action; and the offer of the defendant of the amount of the debt made before the action, although corresponding to the amount claimed, will in these circumstances be declared insufficient.

Perreault v. Breitman, 48 Que. S.C. 172.

(§ II C 1—30)—APPEARANCE BEFORE PARLIAM-
ENTARY AND GOVERNMENTAL BODIES—
VALUE OF SERVICES — DISCRETION OF
COURT.

One who needs the services of an attorney and benefits by those which are rendered is bound to pay their value. The Courts have a discretion in appreciating the value of services rendered by attorneys in judicial matters. But when it is a matter arising outside of the domain of the administration of justice, such as appearing before governments and parliaments, the Court cannot supplement the evidence given by the parties.

Perron v. Security Life Ins. Co., 48 Que. S.C. 439.

(§ II C 1—30)—COSTS—TAXATION—APPEAL.
Re Solicitor, 8 O.W.N. 83.

(§ II C 1—30)—TAXATION OF BILL OF COSTS
AGAINST CLIENT — APPEAL — DISCRETION
OF TAXING OFFICER — EXTRAORDINARY
CHARGES—QUANTUM OF FEES—RETAIN-
ING FEES IN ACTIONS.
Re Solicitor, 8 O.W.N. 437.

(§ II C 1—31)—CONTINGENT FEES.

In the absence of a contract made under the provisions of the Law Society Act, Man., between solicitor and client, there is no authority for fixing the remuneration of a solicitor upon the basis of a commission or percentage of the amount recovered; a solicitor's fee on settlement in a matter where large interests are involved may be taxed by analogy to the usual allowance for counsel fees. [Re *Phillips and Whitla*, 12 D.L.R. 106, 23 Man. L.R. 92, referred to.]

Re *Phillips and Whitla*, 21 D.L.R. 42, 25 Man. L.R. 173, 7 W.W.R. 1019, 30 W.L.R. 360.

(§ II C 2—35)—CHARGING ORDER UPON LAND
—RIGHT OF BONA FIDE PURCHASER.

V., a solicitor, was retained by J. to take action against M. for rescission of an agreement for sale and for removal of a caveat filed by M. The agreement was set aside and the caveat removed. Pending the action referred to, J. agreed to sell the same lands to D., and D. filed a caveat based on his agreement, also paying a portion of the purchase money. Held, that V. was entitled to a charging order upon deceased's interest in the land sold.

Varley v. Commonwealth Trust Co., 9 W.W.R. 911.

III. Remedies against; motions.

(See previous Annual Digests.)

SPECIAL ASSESSMENT.

See Taxes.

For school purposes, see Schools.

SPECIFIC PERFORMANCE.

I. RIGHT TO REMEDY.

A. In general.

B. Oral contracts.

C. Subject-matter of contracts in general.

D. Contracts relating to personal property.

E. Contracts for real property.

II. DECREE OR JUDGMENT.

As to mandatory injunction, see Injunction; Mandamus.

Sufficiency of allegations in action for, see Pleading.

Enforcement of rights and liabilities under agreements for sale of land, see Vendor and Purchaser; Land Titles.

Jurisdiction of Court as to lands situated out of jurisdiction, see Courts, I B.

Annotations.

Grounds for refusing the remedy: 7 D.L.R. 340.

Jurisdiction; contract as to lands in a foreign country: 2 D.L.R. 215.

Oral contract; Statute of Frauds; effect of admission in pleading: 2 D.L.R. 636.

Sale of lands; contract making time of essence; equitable relief: 2 D.L.R. 464.

When remedy applies between vendor and purchaser: 1 D.L.R. 354.

Specific performance of agreements for company debentures: 24 D.L.R. 373.

I. Right to remedy.

B. ORAL CONTRACTS.

(§ I B—15)—OF RECTIFIED INSTRUMENT ON
PAROL EVIDENCE—MISTAKE.

The Court has jurisdiction (in any case in which the Statute of Frauds is not a bar) in one and the same action to rectify a written instrument upon parol evidence of a mistake and to order the agreement to be specifically performed. [Rudd v. Manahan, 5 A.L.R. 34, and Olley v. Fisher, 34 Ch.D. 367, followed.]

Howard v. Stewart, 31 W.L.R. 204, 8 W.W.R. 616.

(§ I B—15)—PART PERFORMANCE OF VERBAL
CONTRACT—AGREEMENT FOR SALE OF
LEASEHOLD—STATUTE OF FRAUDS.

When a contract resting on parol or partly on parol has been partly performed by the purchaser, the vendor will be precluded from setting up the Statute of Frauds, and specific performance will be decreed if the contract is proved; so where the Court found that the plaintiffs had entered into an agreement with the defendants, which was not entirely in writing, for the sale of a leasehold property, and had put them in possession and the defendants had paid part of the purchase price, made repairs to the property and collected the rents, specific performance was decreed.

Moses v. French, 43 N.B.R. 1.

C. SUBJECT MATTER OF CONTRACTS IN GENERAL.

(§ I C—24a)—CONTRACT TO DEVISE LAND — LEGACY IN LIEU—ELECTION.

A monetary bequest in lieu of a contract to devise land puts the legatee to election between specific performance of the devise or the acceptance of the legacy in lieu thereof; but specific performance will not be decreed unless the legatee is first willing to disclaim the legacy. [Snider v. Carlton, 6 O.W.N. 337, reversed.]

Central Trust and Safe Deposit Co. v. Snider, 25 D.L.R. 410, [1916] A.C. 266.

D. CONTRACTS RELATING TO PERSONAL PROPERTY.

(§ I D—26)—AGREEMENT FOR SUBSCRIPTION OF BONDS.

An underwriting agreement providing for subscriptions to an issue of debentures, whereby subscribers agree to give money by instalments or otherwise in exchange for debentures or bonds is tantamount to an agreement to borrow and loan money, and hence is not susceptible of specific performance.

Dorchester Electric Co. v. King; Same v. Thomson; Same v. Industrial Securities Co., 24 D.L.R. 373, 48 Que. S.C. 471, 22 Rev. de Jur. 27.

E. CONTRACTS FOR REAL PROPERTY.

(§ I E 1—30) — WHEN REMEDY REFUSED — TIME AS ESSENCE.

In an action for specific enforcement of an agreement for the sale of land, courts of equity, which look at the substance as distinguished from the letter of agreements, no doubt exercise jurisdiction which enables them to decree specific performance in cases where justice requires it, even though liberal terms of stipulations as to time have not been observed; but they never exercise this jurisdiction where the parties have expressly intimated in their agreement that it is not to apply, by providing that time is to be of the essence of their bargain, unless the parties have expressly or by implication waived such provision. [Kilmer v. B.C. Orchard Lands Co., 10 D.L.R. 172, [1913] A.C. 319, distinguished.]

Steedman v. Drinkle, 25 D.L.R. 420, [1916] A.C. 275, 9 W.W.R. 1146, reversing 14 D.L.R. 835, 7 S.L.R. 20, 5 W.W.R. 706.

(§ I E 1—30)—MISDESCRIPTION OF QUANTUM.

A contract of sale which describes the land as having a "frontage of approximately 73 feet on Queen Street," which, in fact, only had a frontage of 70 feet, constitutes a misdescription materially affecting the value of the subject matter, of which the Court will not decree specific performance.

Floyd v. Hanson, 24 D.L.R. 320, 48 N.B.R. 339.

(§ I E 1—30)—DEFICIENCY IN VALUE—MIS-DESCRIPTION.

On a contract for the sale of land where the vendor is able to perform the contract in substance, but not completely, he is nevertheless entitled to compel specific performance by the purchaser, the vendor making compensation for the deficiency in value. [Flight v. Booth, 1 Bing. (N.C.) 370, applied.] This principle is not limited to cases in which the vendor is protected by the ordinary condition as to misdescription. [See Mortlock v. Buller, 10 Ves. Jr. 291, and Rudd v. Lascelles, [1900] 1 Ch. 815.]

Springer v. Anderson, 9 W.W.R. 922.

(§ I E 1—30)—EXCHANGE OF LANDS — PROPERTY SITUATE IN FOREIGN COUNTRY.

The Court has jurisdiction to decree specific performance of a contract for the exchange of lands situated within the jurisdiction of the Court, at the instance of a foreign plaintiff whose land is situated in a foreign country and who is ready and willing to perform his part of the contract.

Tucker v. Jones, 25 D.L.R. 278, 8 S.L.R. 387, 9 W.W.R. 620, 33 W.L.R. 1.

[See also Plainview v. Transcontinental Townsite Co., 25 D.L.R. 594, 25 Man. L.R. 677; Craig v. Pegg, 25 D.L.R. 581.]

(§ I E 1—30)—SALE OF LAND BY CO-TRUSTEE — BINDING EFFECT ON OTHERS.

An agreement for the sale of land made by one of the trustees named in a will is not binding upon the other, and cannot be specifically enforced against him, regardless of a direction in the will of the deceased trustee that the agreement made by him should be carried out.

Chisholm v. Chisholm, 24 D.L.R. 679, 49 N.S.R. 174.

(§ I E 1—30)—EXCHANGE OF LANDS—MISE EN DEMEURE—PROOF OF OWNERSHIP AND TENDER OF DEED—SUFFICIENCY.

In an action for an order to execute a conveyance, the plaintiff, purchaser, or vendor should first put en demeure the other party; this proceeding should be such as to put him in a position to defend himself and to know that he can himself fulfil his obligations. Thus, if it is a case of an exchange of property, he should establish that he is owner of the immoveable exchanged and tender a deed signed by him, accompanied by his documents of title, and if there is a payment it should be made by a legal tender. A document for exchanging properties which does not mention where the immoveable exchanged is situated, does not give its official number nor refer to any evidence of title, if it is only an agreement for sale sous seing privé signed by a company not a party to the exchange, is informal, and cannot be used to prove the contract in favour of the owner of the immoveable.

Trudel v. Marquette, 24 Que. K. B. 279.

(§ I E 1—30)—AGREEMENT FOR SALE OF LAND — FORMATION OF CONTRACT—OFFER—NE-

NOTATIONS—POSSESSION TAKEN BY PURCHASER—INCOMPLETE AGREEMENT.

Kempenfeldt Land Co. v. Fox, 9 O.W.N. 80.

(§ I E 1—31)—EFFECT OF DOWER INTERESTS — INTEREST OF NON-REGISTERED GRANTEES.

The purchaser's interest under a contract of sale registrable under the B.C. Land Registry Act, 1906, ch. 23, in the register of charges, is only such an interest in the lands as is commensurate with the relief which equity would give by way of specific performance; and his contract with the registered owner of an indefeasible fee will not be effective as against a claim under a valid but unregistered deed admitted by the vendor whereby her title was reduced to a claim for dower and the fee belonged of right to another whose title was shewn in answer to the purchaser's action for specific performance; sec. 75 of the Land Registry Act made the deed inadmissible in disproof of the purchaser's title to a charge under his contract, but it remained properly admissible on the question of the extent to which specific performance ought to be granted under that contract. [Miller and Nicholson v. Howard, Supreme Court of Canada, 4 W.W.R. 1193, reversed.]

Howard v. Miller, 22 D.L.R. 75, [1915] A.C. 318, 112 L.T. 403, 20 B.C.R. 227 at 230.

[Applied in Central Trusts v. Snider, 25 D.L.R. 410.]

(§ I E 2—35)—EXCHANGE OF LANDS—DOUBTFUL TITLES.

Where in an action for specific performance of a contract for exchange of lands the issue of title is raised, but not prominently put forward in the pleadings, the Court will direct a reference to the local registrar to afford the parties an opportunity of taking all proper objections on that ground. [Mayberry v. Williams, 3 S.L.R. 350; Lucas v. James, 7 Hare 410, followed; Landes v. Kusch, 24 D.L.R. 136, referred to.]

Tucker v. Jones, 25 D.L.R. 278, 8 S.L.R. 387, 9 W.W.R. 620, 33 W.L.R. 1.

(§ I E 2—35)—EXCHANGE OF LANDS—DEFECTIVE TITLE.

A party seeking specific performance of an agreement for the exchange of lands is not entitled to the remedy if he delays the perfecting of his title for an unreasonable time.

Williams v. Black, 23 D.L.R. 287, 8 W.W.R. 1139, 31 W.L.R. 844.

(§ I E 2—35)—AGREEMENT FOR SALE OF LAND—ACTION BY PURCHASER FOR SPECIFIC PERFORMANCE — DISCRETION — ADVANTAGE TAKEN OF VENDOR — AGREEMENT TO RESCIND—FAILURE TO ESTABLISH—LACHES IN PROSECUTION OF ACTION—INABILITY OF VENDOR TO CONVEY — DECLARATORY JUDGMENT—LEAVE TO APPLY FOR CONSEQUENTIAL RELIEF.

McLaughlin v. Mallory, 9 O.W.N. 325.

II. Decree or judgment.

(§ II—40)—DISCRETION OF COURT TO GRANT.

The right of the plaintiff to a decree for specific performance is an equitable right and is always a matter for the just discretion of the Court. [Krom v. Kaiser, 18 D.L.R. 226, 7 A.L.R. 467, reversed.]

Krom v. Kaiser, 21 D.L.R. 700, 8 A.L.R. 287, 8 W.W.R. 239, 31 W.L.R. 742.

(§ II—40)—WHEN GRANTED—CONFIRMATION OF TITLE—RIGHT OF VENDEE TO COSTS.

The vendor suing for specific performance may make title even at the trial and if he does so and there has been no repudiation, he is entitled to a decree for specific performance, but the defendant purchaser where title has not previously been made is entitled to costs up to and including confirmation of report on title. [Halkett v. Dudley, 76 L.J. Ch. 330, [1907] 1 Ch. 590, followed.]

Magrath-Holgate v. Countryman, 22 D.L.R. 684.

(§ II—40)—RIGHT TO REFERENCE—TITLE ACQUIRED PENDENTE LITE — RESCISSION — PLEADINGS.

A vendor suing for specific performance is not entitled as of right to a reference as to title or to prove his title acquired pendente lite; the Court may refuse specific performance although title had been got in by the plaintiff before the trial, if he had unreasonably neglected to obtain the title which he had the right to call for after the purchaser had made an offer to complete the sale, and did not in fact have a title to convey until after the purchaser had pleaded the rescission of the agreement. [Krom v. Kaiser, 18 D.L.R. 226, 7 A.L.R. 467, reversed.]

Krom v. Kaiser, 21 D.L.R. 700, 8 A.L.R. 287, 8 W.W.R. 239, 31 W.L.R. 742.

SPEED.

Of automobiles, see Automobiles.

Of railroad train, see Railways; Carriers; Street Railways.

Question for jury as to, see Trial.

SPEEDY TRIAL.

Right of accused to, see Criminal Law; Summary Convictions.

STANDING TIMBER.

See Timber.

STARE DECISIS.

See Courts, V.

STATED CASE.

See Judgment; Appeal.

STATUTE OF FRAUDS.

In general, see Contracts, I.

Necessity of specially pleading, see Pleading.

Specific performance of oral contract, see Specific Performance.

As to parol trusts, see *Trusts*, I.

STATUTE OF LIMITATIONS.

See *Limitation of Actions*; *Adverse Possession*.

STATUTES.

I. ENACTMENT; VALIDITY.

- A. Enactment.
- B. Time of passage and taking effect.
- C. Validity; in general.
- D. Judicial examination; legislative journals.
- E. Entitling; expression of subject.
- F. Plurality of subjects.
- G. Local or special legislation.

II. CONSTRUCTION; OPERATION; EFFECT.

- A. In general; use of words.
- B. Strict or liberal construction.
- C. Adopted or re-enacted statutes.
- D. Prospective or retrospective operations.

III. REPEAL; AMENDMENT; REVISION; RE-ENACTMENT.

Illegality of contract under express provisions of, see *Contracts*, III.

Construction of constitution, see *Constitutional Law*.

Construction of Statute of Limitations, see *Limitation of Actions*; *Adverse Possession*.

Employers' Liability, *Workmen's Compensation*, see *Master and Servant*.

Statute imposing tax, see *Taxes*.

Municipal by-laws, see *Municipal Corporations*.

I. Enactment; validity.

(See previous Annual Digests.)

II. Construction; operation; effect.

A. IN GENERAL; USE OF WORDS.

(§ II A—95)—KING'S BENCH ACT, MAN.—DISCRETION AS TO COSTS.

No further power is conferred upon the Judge by r. 952 of the King's Bench Act, Man., in regard to the disposition of the costs than was previously conferred by r. 934, which was the original rule conferring discretion as to costs and was taken from O. 65, r. 1, of the English Judicature Act; r. 952 is to be construed along with r. 934 and not as repealing or being substituted for the latter. [*Shillinglaw v. Whillier*, 19 Man. L.R. 149, distinguished; *Matheson v. Kelly*, 18 D.L.R. 228, 24 Man. L.R. 695, referred to.]

Gibson v. Snaith, 21 D.L.R. 716, 25 Man. L.R. 278, 8 W.W.R. 247.

(§ II A—95)—LOCAL IMPROVEMENT ACT—AMENDMENT—INTENTION.

The amendment to the Local Improvement Act, R.S.O., 1914, ch. 193, made by the statute 4 Geo. V. (Ont.), ch. 21, sec. 42, is intended to give dissentient land owners a remedy analogous to those given by

counter-petition and by notice to the council, and provides an appeal from the discretion of the council in undertaking the work at all or in respect of some detail of the work such as the apportionment of the cost; but when the work has been executed in assumed conformity with the council's declared intention, an appeal does not lie to the Ontario Railway and Municipal Board to review the council's discretion.

Re Kemp and City of Toronto, 21 D.L.R. 833, 7 O.W.N. 704.

(§ II A—96)—EMPLOYERS' LIABILITY ACT—LEGISLATIVE INTENT.

A statute such as an *Employers' Liability Act* should not, upon any assumption or presumption of mistake or omission on the part of the legislature in the expression of its intention, be treated as extinguishing rights of action which it does not expressly or by necessary implication abrogate. [*Commissioners v. Pemsel*, [1891] A.C. 531, 549; *Cowper Essex v. Acton Local Board*, 14 A.C. 153, 169, applied.]

Lamontagne v. Quebec R., L., H. & P. Co., 22 D.L.R. 222, 50 Can. S.C.R. 423.

(§ II A—98)—LOOKING TO ITS ENTIRETY.

To interpret a statute the effects which result from the whole of its provisions should be considered whatever may be the expressions used, unless the latter are not very clear.

Association of Architects v. Paradis, 48 Que. S.C. 220.

(§ II A—101)—EXCEPTION TO A RULE—PARI MATERIA.

When a statute creates an exception to a rule for a special case, this exception cannot be extended to another case even one in *pari materia*.

Cedars Rapids Mfg. & Power Co. v. Lacoste, 24 Que. K.B. 207.

(§ II A—105)—EJUSDEM GENERIS—SPECIFIC WORDS OF SAME NATURE—QUEBEC LICENSE LAW.

A general word which follows particular and specific words of the same nature as itself takes its meaning from them and is presumed to be restricted to the same genus as those words; so in sec. 1292 (a) added in 1915 to the Quebec License Law, R.S.Q. 1909, the requirement of a license fee for any "travelling troupe or organization exhibiting trained animals, or acrobatic feats, or curios and freaks or giving concerts and minstrel shows or any other similar shows" is to be interpreted, both as to the word "concerts" and the term "other similar shows," by reference to the class of show specifically mentioned and as not applying to high-class entertainments given by artists distinguished in their profession.

Collector of Revenue v. Paquet, 25 Can. Cr. Cas. 83.

(§ II A—107)—RECURRING PHRASES IN SAME STATUTE.

In the interpretation of the Criminal Code,

where the same words occur in different sections, they should be given the same meaning unless a contrary intention appears.

R. v. Romer; R. v. Johnson; R. v. Farrell, 23 Can. Cr. Cas. 235.

B. STRICT OR LIBERAL CONSTRUCTION.

(§ II B—113)—REMEDIAL LEGISLATION.

The construction of a statute which, although the apparent logical construction of its language leads to results which it is impossible to believe those who framed or passed the statute contemplated, and from which the judgment recoils, should not be held to be the true construction of the statute. [*Reg. v. Clarence*, 22 Q.B.D. 23, followed.] Remedial statutes should receive a benevolent construction.

Re Drewery Estate, 9 W.W.R. 628, 956, 33 W.L.R. 73.

D. PROSPECTIVE OR RETROSPECTIVE OPERATIONS.

(§ II D—125)—RETROSPECTIVE OPERATION.

A statute should not be construed so as to have a retrospective operation unless its language is such as plainly to require such a construction.

Collector of Revenue v. Boisvert, 24 Can. Cr. Cas. 138.

(§ II D—125)—FARM MACHINERY ACT—RETROACTIVE OPERATION.

The Farm Machinery Act (Alta.), 1913, ch. 15, is of retroactive operation and applies to agreements entered into before the passage of the Act. [*Benson v. International Harvester Co.*, 16 D.L.R. 350, not followed; *West v. Gwynne*, [1911] 2 Ch. 1, followed.]

Chapin v. Matthews, 24 D.L.R. 457, 9 W.W.R. 301, 32 W.L.R. 663, reversing 22 D.L.R. 95.

III. Repeal; amendment; revision; re-enactment.

(See previous Annual Digests.)

STATUTORY DUTY.

Negligence by breach of, see Negligence.

As to safety of place and appliance, see Master and Servant.

As to motor vehicles, see Automobiles.

As to nuisances, see Nuisance.

STAY OF PROCEEDINGS.

Annotations.

Of actions by alien enemies: 23 D.L.R. 375.

Actions affected by moratorium: 22 D.L.R. 865.

(§ I—5)—CRIMINAL PROSECUTION.

In provinces where there is no Grand Jury system and therefore no indictment the case is not in the provincial Supreme Court for trial until a formal charge in lieu of an indictment has been preferred, and a stay of

proceedings by the Attorney-General cannot be entered under Cr. Code, sec. 962, in the event of no formal charge having been laid. [Note that for purposes of sec. 962 the term "indictment" includes a formal charge under Code sec. 873 A by the interpretation clause, Code sec. 2 (16), as amended 1907.]

Rex v. Weiss, 23 D.L.R. 710, 23 Can. Cr. Cas. 460, 8 S.L.R. 74, 7 W.W.R. 1160, 30 W.L.R. 458.

(§ I—5)—TO ENABLE SUMMONING PRINCIPAL DEBTOR—ACTION ON GUARANTY UPON DISSOLUTION OF PARTNERSHIP.

If on dissolution of a partnership one partner guarantees a debt due to his co-partner, he becomes a surety for the debtor, and if he is sued by his co-partner he has a right to a stay of proceedings by dilatory exception in order that he may summon the principal debtor in warranty.

Findlay v. Howard, 24 D.L.R. 229, 24 Que. K.B. 59.

(§ I—5)—TO ENABLE SEIZURE BY CREDITOR—ABANDONMENT.

The formal abandonment by a creditor of the benefit of seizure, deprives him of the right, in an action brought against him, to a stay of proceedings in order that he may seize and sell the property of the original debtor as provided by art. 177, C.P.Q., par. 5.

Findlay v. Howard, 24 D.L.R. 229, 24 Que. K.B. 59.

(§ I—5)—APPEAL PENDING—TERMS AS TO COSTS.

On an application for a stay of proceedings on a verdict pending an appeal, the stay was refused except on terms of payment of the amount of the verdict to the successful party and the taxed costs to his solicitor, the former giving security for repayment in case of the appeal being successful, or consenting that the amount be paid into Court, and the latter giving an undertaking to repay the costs if so ordered by the Appeal Court. *Porter v. O'Connell*, 43 N.B.R. 611.

(§ I—13)—NON-PAYMENT OF COSTS—SIMILAR ACTION.

To justify an order staying an action on the ground that costs awarded in favour of the same defendant against the same plaintiff in a previous action had not been paid, the second action must be for the same or substantially the same cause of action as the first. [*Higgins v. Woodhall*, 6 T.L.R. 1, followed.]

Moore v. Deal, 22 D.L.R. 697, 21 B.C.R. 243, 8 W.W.R. 774, 31 W.L.R. 176.

(§ I—13)—CAVEATS—SECOND ACTION — NON-PAYMENT OF COSTS.

Otis v. Otis, 24 D.L.R. 897, 9 W.W.R. 141, 32 W.L.R. 402.

(§ I—13)—COSTS OF APPEAL IN FORMER ACTION BETWEEN SAME PARTIES UNPAID—RELIEF CLAIMED IN BOTH ACTIONS PRACTICALLY THE SAME.

Davidovitch v. Swartz, 9 O.W.N. 246.

(§ I—21)—PENDING CRIMINAL PROSECUTION—
FUGITIVE FROM JUSTICE.

A stay of proceedings of a civil action until after a trial for a criminal offence arising out of the same transaction will not be granted when the defendant is a fugitive from the jurisdiction and resists every attempt to bring him back.

Attorney-General v. Kelly, 24 D.L.R. 660, 25 Man. L.R. 696, 9 W.W.R. 492, 32 W.L.R. 771.

(§ I—30)—STAY PENDING APPEAL — ASSESSMENT FOR SCHOOL TAXES.

Town of Fort Frances v. Ontario & Minnesota Power Co., 22 D.L.R. 884, 9 O.W.N. 4.

(§ I—30)—ACTION FOR COMPENSATION IN EXPROPRIATION BY RAILWAY—ARBITRATION PENDING.

Stay of proceedings in an action against a railway company pending arbitration refused, on the ground that the statement of claim disclosed a case for compensation independently of that which the arbitrator would have power to award the plaintiff under the Railway Act.

Bengert v. C.N.R. Co., 9 W.W.R. 283.

(§ I—30)—DELAY IN PROSECUTION OF REFERENCES AND IN BRINGING ON PENDING INTERLOCUTORY MOTIONS FOR DETERMINATION—DEATH OF PLAINTIFF — FAILURE OF EXECUTOR TO REVIVE ACTION—LOCUS PENITENTIE.

Hull v. Allen, 8 O.W.N. 577.

STIPULATED DAMAGES.

See Damages.

STOCK.

Of corporations generally, see Corporations and Companies.

Carriage of live stock, see Carriers.

STOCK BROKERS.

See Brokers; Principal and Agent; Factors.

STOLEN PROPERTY.

As to prosecutions, see Theft.

Probable cause for criminal prosecution, see Malicious Prosecution.

STORAGE.

See Warehousemen; Carriers.

STREAM.

Navigability, Right in bed and shore, Riparian rights, see Waters.

STREET RAILWAYS.

I. FRANCHISES; CONSTRUCTION.

II. MOTIVE POWER.

III. OPERATION.

A. In general.

B. Duty and care of railway company.

C. Contributory negligence.

Negligence causing death, actions for, see Death.

Carriers generally, see Carriers.

As to safety of place and appliances, see Master and Servant.

Municipal regulation as to, see Municipal Corporations.

Proximate cause of injury by, see Proximate Cause; Negligence.

Question for jury as to negligence, see Trial.

As to snow and ice, see Highways.

Damages for accidents on, see Damages.

Railways in general, see Railways.

Annotation.

Reciprocal duties of motormen and drivers of vehicles crossing the tracks: 1 D.L.R. 783.

I. Franchises; construction.

(§ I—3)—REPAIR OF ROADWAY—"TRACKS"—
POWERS OF RAILWAY BOARD.

The obligation imposed upon a street railway company by its agreement with a municipality, that the former should "keep clean and in proper repair that portion of the travelled road between the rails, and for eighteen inches on either side thereof," does not extend to the doing of works which would give the roadway between the rails a new character, and the word "tracks" in sec. 3 of the Ontario Railway and Municipal Board Amendment Act, 1910, does not include the roadway between the rails, under which the Board has no jurisdiction to order the street railway company to pave that part of a road used by the railway.

Toronto Suburban R. Co. v. City of Toronto, 24 D.L.R. 269, [1915] A.C. 590, reversing 13 D.L.R. 674, 29 O.L.R. 105, 16 Can. Ry. Cas. 65.

(§ I—3)—ANNEXED TERRITORY — DEVIATION OF ROUTE—APPROVAL OF PLANS.

An order of the Ontario Railway and Municipal Board allowing an application made by the railway company for the approval of certain plans of tracks by way of deviation from its existing line along Yonge street, in the city of Toronto, to a proposed station on land adjoining that street—the locus having been annexed to the city of Toronto in 1908—was reversed on appeal, upon the ground—according to the opinion of the majority—that no plan of the proposed deviation was ever submitted to or approved by the municipal officials of either the county or the city. Held, such a plan, so approved, is expressly made by the terms of the agreement dated the 25th June, 1884, made between the railway company and the Corporation of the County of York, validated by 56 Vict. ch. 94 (O.), the very basis of all the work to be afterwards undertaken upon the highway; and its production and approval cannot be dispensed with by the Board. The decision of Falconbridge, J., in City of Toronto v. Metropolitan R.W. Co. (1900), 31 O.R. 367, and the decision of

the Privy Council in Toronto and York Radial R.W. Co. v. City of Toronto (1913), 25 O.W.R. 315, applied.

Re Toronto & York Radial R. Co. and Toronto, 26 D.L.R. 244, 35 O.L.R. 57.

(§ I-7)—EXCLUSIVE RIGHT TO OPERATE UPON STREETS—FRANCHISE OF ANOTHER RAILWAY.

Upon the proper construction of the agreement made in 1891 between the Corporation of the City of Toronto and the Toronto Railway Company and validated by the Ontario statute 55 Vict. ch. 99, the grant to the company of the right to operate surface street railways in the city for the term of 30 years from September 1, 1891, is not subject to a permanent exception as regards the portion of Yonge street from the Ontario and Quebec Railway (now the Canadian Pacific Railway) tracks to the north city limits; the restriction effected by the franchise of the Metropolitan Street Railway Company being removed during the period of 30 years, the city corporation cannot withhold from the Toronto Railway Company the exclusive right to operate upon the portion of Yonge street referred to, in the same manner as upon the other streets of the city. [City of Toronto v. Toronto R. Co., 5 O.W.R. 130, 132 (affirmed in Toronto R. Co. v. Toronto Corporation, [1906] A.C. 117), followed.] An order of the Ontario Railway and Municipal Board declaring the right of the Toronto Railway Company to operate upon the portion of Yonge street referred to was affirmed; and it was held, that the proceedings before the Board were a sufficient submitting of the plans to the City Engineer under clause 12 of the conditions of the agreement.

Re Toronto R. Co. and City of Toronto, 34 O.L.R. 456.

II. Motive power.

(See previous Annual Digests.)

III. Operation.

A. IN GENERAL.

(§ III A-22) — TRACKS — ALTERATION OF GRADE—MUNICIPAL REGULATION.

Where the pattern of rails laid by a street railway company is approved by the municipal authorities, a removal of the tracks by the municipality for the purpose of altering the grade of the street does not give it authority to order the company to replace them with rails of a different pattern, but it may require the company to keep its tracks level with the altered grade on a sufficient foundation, although it cannot require the use of any particular foundation.

St. John R. Co. v. City of St. John, 24 D.L.R. 596, 43 N.B.R. 417.

B. DUTY AND CARE OF RAILWAY COMPANY.

(§ III B-25)—INJURY TO PASSENGER—EXTENDING ARM THROUGH WINDOW.

Unless a tramway company has been

guilty of negligence in some other respect, a passenger who puts his arm ~~on~~ the sill of the car window in such a way that it projects beyond the side of the car, and is struck by a car going in the opposite direction, cannot recover damages for such injuries.

Montreal Tramways Co. v. Lefebvre, 24 D.L.R. 278, 24 Que. K.B. 83.

(§ III B-25)—STRUCK BY STEP OF CAR.

A plaintiff suing a street railway company for being hit by the step of a car while at the side of the track is not entitled to have the question of negligence submitted unless he has established by some reasonable proof want of due care by the company or its servants.

Dunham v. Cape Breton Electric Co., 21 D.L.R. 38, 48 N.S.R. 287.

(§ III B-25)—INJURY TO PERSON ON HIGHWAY—NEGLIGENCE—EVIDENCE—FINDINGS OF JURY—MOTION FOR NONSUIT—SPEED OF CAR—SOUNDING WHISTLE—ONTARIO RAILWAY ACT, R.S.O. 1914, CH. 185, SEC. 155—CONTRIBUTORY NEGLIGENCE—ULTIMATE NEGLIGENCE.

Humberstone v. Toronto and York Radial R. Co., 7 O.W.N. 711.

(§ III B-26)—NEGLIGENCE—COLLISION BETWEEN STREET CAR AND AUTOMOBILE—DERAILMENT OF CAR—RES IPSA LOQUITUR—EVIDENCE—FINDINGS OF JURY.

Curry v. Sandwich, Windsor and Amherstburg R. Co., 8 O.W.N. 287.

(§ III B-26)—NEGLIGENCE—COLLISION BETWEEN STREET RAILWAY CAR AND AUTOMOBILE—WHICH PARTY AT FAULT—FINDINGS OF JURY—DANGEROUS CROSSING—HIGH RATE OF SPEED—EVIDENCE—DAMAGES—COSTS.

Seguin v. Sandwich, Windsor and Amherstburg R. Co., 9 O.W.N. 108.

(§ III B-27)—CROSSINGS—COLLISION WITH AUTOMOBILE.

An action for injury to an automobile by a collision with a street car on turning a corner cannot be maintained against the electric railway if there was no evidence to warrant the jury in finding that the motorman, by exercising reasonable care, could have stopped his car and have avoided the collision after he had become aware or ought to have become aware that danger was imminent.

Gooderham v. Toronto R. Co., 22 D.L.R. 898, 8 O.W.N. 3.

(§ III B-27)—SPUR TRACK—LIABILITY FOR INJURIES CAUSED BY CARS RELEASED BY CHILDREN—COLLISION.

A street railway company, which is supplying material for a street construction company, and has for that purpose a spur line connecting with the main track by a knife switch, which allows cars upon the spur line to run down the grade and out on to the main line, is responsible for injuries

caused by boys releasing the cars on the spur line, thus causing a collision with the car on the main line on which the plaintiff was travelling. [McDowall v. Great Western R. Co., [1903] 2 K.B. 331, distinguished.]

Green v. B.C. Electric R. Co., 25 D.L.R. 543, 9 W.W.R. 75, 32 W.L.R. 393.

(§ III B-28) — COLLISION — SPEED AND SIGNALS — INCOMPETENT MOTORMAN — FINDING OF JURY.

Where the only finding of the jury on the question of negligence in a collision case against an electric railway company was, that the defendants were negligent in appointing an incompetent motorman, it is to be assumed that the jury found in defendants' favour on the other questions raised in the case, such as the speed of the car, the failure to sound the gong, the sufficiency of the brakes, and the alleged operation of the car on the wrong track of a double track system.

Mehner v. Winnipeg Electric Co., 21 D.L.R. 786, 25 Man. L.R. 384, 18 Can. Ry. Cas. 179, 8 W.W.R. 517.

(§ III B-29) — DANGEROUS PLACING OF POLE—ABSENCE OF GUARDS—COLLISION.

A street railway company empowered by its Act of incorporation to erect poles on a street, so as not to impede public travel, will be liable in damages for injuries to a vehicular traveller resulting from a collision of a motor car with one of the trolley poles that had been shifted from its uniform position at the side of the street to the devil's strip, without any lights to guard it at night.

Weir v. Hamilton Street R. Co., 22 D.L.R. 155, 32 O.L.R. 578, 7 O.W.N. 495.

[Reversed in 25 D.L.R. 346, 51 Can. S.C.R. 506.]

(§ III B-29)—DANGEROUS PLACING OF POLE —WANT OF LIGHTS—COLLISION.

A street railway company is not liable for injuries resulting from a collision of an automobile driven at night with a wire pole erected between the tracks, where the placing of the pole was done in pursuance of a municipal by-law and under the supervision of the city engineer, and there being no municipal regulation as to lighting the pole. [Weir v. Hamilton Street R. Co., 22 D.L.R. 155, 32 O.L.R. 578, reversed.]

Hamilton Street R. Co. v. Weir, 25 D.L.R. 346, 51 Can. S.C.R. 506.

(§ III B-36)—INJURY TO DOG — CONTRIBUTORY NEGLIGENCE.

For the plaintiff suing an electric railway company for having run down and killed a valuable dog owned by him, to have allowed the dog to follow the rig in which he was driving along the street car track in a city at a distance of 100 feet or more is such contributory negligence as will disentitle him to recover where the jury has found that the plaintiff did not have his dog in proper control while on the street.

Lucas v. City of Toronto, 22 D.L.R. 601, 8 O.W.N. 253.

C. CONTRIBUTORY NEGLIGENCE.

(§ III C-40)—BOARDING CAR WHILE IN MOTION—WARNINGS AGAINST.

Disregard of a warning prominently displayed at the point of entrance to a street car that persons should not get on the car while it is moving, may constitute contributory negligence on the part of the passenger which will prevent his recovering damages for injury to his foot by having it caught in the step riser which was defectively and improperly built, if it appears that the plaintiff's foot could not have slipped into the opening left in the riser had he boarded the car when it was stationary. [Newberry v. Bristol Tramways, 107 L.T.R. 800, referred to.]

Black v. City of Calgary, 24 D.L.R. 55, 31 W.L.R. 191, 8 W.W.R. 646.

(§ III C-42) — COLLISION AT CROSSING — FAILURE TO LOOK—INJURY AVOIDABLE NOTWITHSTANDING CONTRIBUTORY NEGLIGENCE.

An inoperative brake on a car which is incapable of arresting its movement when running at an excessive speed will render the railway company liable for personal injuries resulting from a collision of the car with a vehicle at a level crossing, notwithstanding the contributory negligence of the injured in not looking out to see whether the road was clear. [Loach v. B.C. Electric R. Co., 16 D.L.R. 245, 19 B.C.R. 177, affirmed.]

B.C. Electric R. Co. v. Loach, 23 D.L.R. 4, 32 W.L.R. 169, 113 L.T. 946.

(§ III C-47)—DEATH OF PERSON STRUCK BY CAR IN ATTEMPTING TO CROSS TRACKS — NEGLIGENCE — CONTRIBUTORY NEGLIGENCE — ULTIMATE NEGLIGENCE—FINDINGS OF JURY—APPEAL.

Hayes v. Ottawa Electric R. Co., 8 O.W.N. 407.

[Reversed by Canada Supreme Court, Feb. 1, 1916.]

STRIKES.

(§ I-10) — INCITING TO GO ON STRIKE — INDUSTRIAL DISPUTES — STRIKE PRE-ARRANGED WITHOUT DEMAND FOR BETTER TERMS.

To constitute the criminal offence of inciting to strike under the Industrial Disputes Investigation Act, 1907, Can., ch. 20, secs. 56 and 60, there must have been a "dispute" under sec. 2 (e) on account of which the strike was incited; the offence may consist of inciting miners to go on strike after the strike has started although there had been no previous demand by the miners upon their employers for different conditions or wages, but it is not made a crime under that Act to incite the commencement of a strike before any demand for better terms of employment.

Rex v. Holowaskawe; Rex v. Croft; Rex v. Cleary, 24 Can. Cr. Cas. 224.

STRIKING OUT.

Of appeal, see Appeal.
Of pleading, see Pleading, I.

SUB-CONTRACTORS.

Liens of, see Mechanics' Liens.

SUB-LEASE.

See Landlord and Tenant.

SUBPOENA.

See Witnesses.
Service of, see Writ and Process.

SUBROGATION.

As to insurance, see Insurance.

Annotation.

Surety; Security for guaranteed debt of insolvent; Laches; Converted security: 7 D.L.R. 168.

(§ I—1)—SATISFACTION OF LIEN BY ONE OF SEVERAL DEVISEES — RIGHTS AGAINST OTHERS.

Where one of the devisees, under a devise to several persons separately of certain properties to each, has paid more than his equitable share of a lien or charge in favour of a third person which by the terms of the will is imposed jointly upon all the properties in priority to the devisees, such devisee is entitled to be subrogated as against the others to the claim of the lienor in respect of the excess paid over and above his rightful share. [Flint v. Howard, [1893] 2 Ch. 54; Re Bank of Liverpool, 43 N.S.R. 205, referred to.]

Gass v. Dickie, 22 D.L.R. 521, 48 N.S.R. 482.

SUBSTITUTION.

Of party, see Parties.

SUBSTITUTIONAL SERVICE.

See Writ and Process.

SUCCESSION.

See Descent and Distribution; Wills; Executors and Administrators.
Succession duty, see Taxes, V.

SUFFRAGE.

Right of, see Elections.

SUMMARY CONVICTIONS.**I. GENERALLY.****II. JURISDICTION AND DUTY OF MAGISTRATE.****III. PROCEDURE.****IV. EFFECT.****V. PENALTIES AND COSTS.****VI. RECORD OF CONVICTION AND PROCEEDINGS.****VII. AMENDMENT.****a. On appeal.**

b. On motion to quash or habeas corpus, or certiorari.

VIII. DUPLICITY AND UNCERTAINTY.

Right of appeal from, see Appeal.

Removal and review of summary conviction by certiorari process, see Certiorari.

Sufficiency of indictment, see Indictment.

See also Criminal Law.

Jurisdiction of magistrates, see Justice of the Peace.

Annotations.

Notice of appeal; Recognizance; Appeal: 19 D.L.R. 323.

Order for further detention on quashing conviction: 21 D.L.R. 649.

I. Generally.

(See previous Annual Digests.)

II. Jurisdiction and duty of magistrate.

(§ II—20)—SUMMARY TRIAL — JURISDICTION WITHOUT CONSENT.

The absolute jurisdiction of a police magistrate in Saskatchewan, of a city having a population of over 2,500, is retained under Code secs. 776 and 777 as to the offences specified in Code sec. 773 (including that of unlawful wounding), and the consent of the accused to summary trial is required by Code secs. 777 and 778, only in those cases in which there is additional jurisdiction under sec. 777. [R. v. Hayward, 6 Can. Cr. Cas. 399, 5 O.L.R. 65, applied; Re Worrell (No. 1), 21 D.L.R. 519, 24 Can. Cr. Cas. 88, affirmed.]

Re Worrell, 21 D.L.R. 522, 24 Can. Cr. Cas. 92, 8 W.W.R. 478, 30 W. L. R. 915, 8 S.L.R. 140.

(§ II—20)—TERRITORIAL JURISDICTION OF MAGISTRATE—INCONVENIENT PLACE OF TRIAL.

Where, as in Alberta, justices of the peace are appointed with territorial jurisdiction extending over the entire province, an objection that the charge was not laid before the nearest justice will not be a ground for quashing the summary conviction unless there has been a gross abuse of authority in compelling the attendance of the accused at a far-distant and inconvenient place of trial, notwithstanding the availability of a justice at a convenient place of trial, under circumstances amounting to a denial of the right of the accused to make his "full answer and defence" (Cr. Code, sec. 715). [R. v. Farrell, 15 Can. Cr. Cas. 283, referred to.]

Rex v. Tally, 21 D.L.R. 651, 23 Can. Cr. Cas. 449, 8 A.L.R. 453, 7 W.W.R. 1178, 30 W.L.R. 396.

(§ II—20)—LOCALITY OF OFFENCE — TERRITORIAL JURISDICTION.

Where the depositions already taken before the justice do not supply the defect which makes a summary conviction bad on its face, the justice cannot without the par-

ties being before him and having an opportunity of being heard make up a substituted conviction or amend a defective conviction. [Chaney v. Payne, 1 Q.B. 712, applied.]

Rex v. Aikens, 21 D.L.R. 633, 23 Can. Cr. Cas. 467, 48 N.S.R. 509.

(§ II—20)—DEFECTIVE INFORMATION — NON-APPEARANCE OF ACCUSED.

A fatal objection to an information in a summary proceeding cannot be cured by the testimony adduced where the defendant does not appear. [R. v. Hughes, 4 Q.B.D. 614; Turner v. Postmaster-General, 5 B. & S. 756, distinguished.]

Ex parte Monahan, Rex v. Hubbard, 24 Can. Cr. Cas. 127, 42 N.B.R. 524.

(§ II—20)—INFORMANT OFFICER IN CHARGE OF ACCUSED.

Where the defendant has had an opportunity of entering upon the full defence of the charge brought against him of selling intoxicating liquor in contravention of law, the fact that the officer who laid the information and the officer to whose custody the accused was committed pending the determination of the charge was one and the same person does not go to the jurisdiction of the magistrate so as to invalidate the conviction under a statute under which certiorari is expressly taken away, ex. gr., the Canada Temperance Act.

Ex parte Richard; Rex v. Steeves, 24 Can. Cr. Cas. 183, 42 N.B.R. 596.

(§ II—20)—OBSTRUCTING PEACE OFFICER — MODE OF TRIAL—RIGHT OF ACCUSED TO ELECT.

The offence of obstructing a peace officer in the execution of his duty may be prosecuted and punished before two justices or before any magistrate having the jurisdiction of two justices, under the procedure provided by Part XV. of the Code, without the consent of the accused to a summary trial, and such procedure is not controlled by the provisions of Part XVI. requiring such consent. Per White and Barry, JJ., Grimmer, J., dissenting. Per Grimmer, J., that the procedure for the summary trial of the offence is controlled by Part XVI., and the accused cannot be so tried without having been first put to his election as provided by sec. 778, notwithstanding the provisions of sec. 169. [The Queen v. Crossen, 3 Can. Cr. Cas. 152; The King v. Carmichael, 7 Can. Cr. Cas. 167, and the King v. Van Koilberger, 16 Can. Cr. Cas. 228.]

The King v. Folkins; ex parte McAdam, 43 N.B.R. 538, 25 Can. Cr. Cas.

(§ II—20) — OBSTRUCTING OFFICIAL DUTY — ASSAULT ON CROWN LAND SURVEYOR.

On an information charging that the accused unlawfully and maliciously assaulted and threatened to beat one T., a Crown land surveyor, and prevented him from performing his official duty, the magistrate found the accused guilty as charged and adjudged that he pay the sum of \$20 over and above the amount of the damage

done, being \$13 and the costs, and, in default of the payment of the said several sums and costs of conveying to gaol, he be imprisoned for two months. Held, per McLeod, C.J., and White, J., Grimmer, J., dissenting, that, as the obstructing of T. in the discharge of his official duty was not an offence over which the magistrate had jurisdiction on summary conviction, the conviction must be quashed, and could not be amended under sec. 1124 of the Criminal Code. Per Grimmer, J., that the allowance of the \$13 for damages might be treated as surplusage and stricken out, and the conviction amended under sec. 1124 of the Code, and stand as a conviction for an assault with a penalty of \$20 and costs.

The King v. Dugas, 43 N.B.R. 443.

(§ II—20)—COMMITMENT FOR ASSAULT.

Justices of the peace have no jurisdiction under part XVI. to hear a charge of committing an assault occasioning actual bodily harm, contrary to sec. 295 of the Criminal Code, inasmuch as the jurisdiction given to magistrates under sec. 773 is a statutory one, and cannot be extended by implication. [R. v. Sharpe, 18 Can. Cr. Cas. 132, referred to; R. v. Hostetter, 7 Can. Cr. Cas. 221.]

Rex v. Law, 9 W.W.R. 1075, 25 Can. Cr. Cas.

(§ II—22)—STATING PLACE OF OFFENCE IN INFORMATION.

An information under the Canada Temperance Act, R.S.C. 1906, ch. 152, is bad as not disclosing an offence within the magistrate's territorial jurisdiction if it does not specify where the offence took place, although the place of the offence was stated in the summons served upon the defendant; a conviction made on such information in default of the appearance of the defendant thereto must be quashed.

Ex parte Monahan; Rex v. Hubbard, 24 Can. Cr. Cas. 127, 42 N.B.R. 524.

III. Procedure.

(§ III—30) — HEARING — OPPORTUNITY FOR DEFENCE.

Where the accused has appeared in person to defend the charge an opportunity must be given him to put in his own evidence and that of other witnesses, and he should be distinctly asked by the magistrate whether he desires to give evidence.

Rex v. Curry, 24 Can. Cr. Cas. 340, 8 O.W.N. 512.

(§ III—30)—WITHDRAWAL OF COMPLAINT.

The person who has laid the complaint in a summary proceeding for keeping a disorderly house and who thereafter declares under oath before the magistrate that she laid the charge without understanding it and under duress of detectives may be permitted to withdraw it and so terminate the proceedings. [Baxter v. Gordon Ironsides and Fares Co., 13 O.L.R. 598, and Tambllyn

v. Westcott, 23 Can. Cr. Cas. 391, referred to.]

Rex v. Rousseau, 24 Can. Cr. Cas. 390.

(§ III—30)—TRIAL—APPEARANCE BY COUNSEL.

In a summary conviction matter, the accused may appear by counsel instead of personally, and the magistrate has jurisdiction to proceed without requiring the accused to be personally present. [Denault v. Robida, 8 Can. Cr. Cas. 501; Ex parte Doherty, 1 Can. Cr. Cas. 84; Proctor v. Parker, 3 Can. Cr. Cas. 37; and R. v. McDonald, 8 Can. Cr. Cas. 348, referred to; R. v. Thompson, 100 L.T. 970, and R. v. Montgomery, 102 L.T. 325, applied.]

R. v. Romer; R. v. Johnson; R. v. Farrell, 23 Can. Cr. Cas. 235.

(§ III—31)—SECOND OFFENCE—MENTION OF FIRST CONVICTION.

Infringement of a statutory direction that, on a trial for a second offence subjecting to an increased penalty, no mention shall be made of the prior conviction until after an adjudication of guilt for the alleged second offence, will invalidate the summary conviction; but the affidavits filed must satisfy the Court that there was something more than the commencement by counsel of his address preliminary to tendering the evidence, which address was stopped by the magistrate until the latter had completed the writing of the adjudication. [R. v. Nurse, 8 Can. Cr. Cas. 173; R. v. Fox, 10 Cox C.C. 502; and Faulkner v. Rex, [1905] 2 K.B. 76, referred to.]

Re Ellis, 24 Can. Cr. Cas. 345.

(§ III—33)—POSTPONEMENT OF DECISION PENDING HEARING OF ANOTHER CHARGE.

In summary conviction matters the justices are not to mix up two or more criminal charges and convict or acquit in any one of them with any reference to the facts appearing in the others; but the justices may for reasons of justice arising out of the circumstances of the case and for its better determination, postpone their decision in one or more cases and before deciding them proceed with the trial of other similar charges against the same accused so long as their discretion in so postponing is honestly exercised and is not used directly or indirectly with a view of bringing in facts or evidence which have no legitimate bearing upon their decision. [R. v. Fry (1898), 19 C.C. 135, applied. R. v. Bullock, 8 Can. Crim. Cas. 8, 6 O.L.R. 663; R. v. Sing, 6 Can. Crim. Cas. 156, referred to.]

Ex parte Richard; Rex v. Steeves, 24 Can. Cr. Cas. 183, 42 N.B.R. 596.

(§ III—34)—DEPOSITIONS IN SHORTHAND—OATH OF COURT STENOGRAPHER.

The fact that the stenographer acting at the magistrate's direction, in taking the evidence in a summary conviction matter, makes affidavit that he was sworn to "transcribe" the evidence, while the statute requires that he be sworn to "report" the

evidence is not conclusive in support of an objection that the trial was irregular in that respect; and the Court on habeas corpus may affirm the conviction where the magistrate could not remember whether the stenographer was sworn or not, and it was not clear that the oath taken by the stenographer was not in substance to "report" the evidence, the stenographer disclaiming that he was sworn other than in the usual form and probably using the word "transcribe" as the equivalent of "report."

Rex v. Book, 25 Can. Cr. Cas. 89.

IV. Effect.

(See previous Annual Digests.)

V. Penalties and costs.

(§ V—50)—ARBITRARY AND EXCESSIVE AMOUNT—STRIKING OUT.

A summary conviction under a liquor license law cannot be supported in so far as it awards as an arbitrary sum, fifty dollars, to the complainant for costs where no witnesses were brought from a distance, but the Court, on a motion to quash, may amend the conviction by striking out the award of such costs.

Rex v. Palmer, 22 D.L.R. 300, 24 Can. Cr. Cas. 20, 25 Man. L.R. 359.

(§ V—50)—IMPRISONMENT IN DEFAULT OF PAYING FINE—SPECIAL ACT.

The magistrate making a summary conviction for an infraction of the Dental Profession Act, R.S.S., ch. 108, has power to order imprisonment forthwith in default of payment of the fine and costs, although sec. 51 of that Act provides a special mode of levying a fine by distress. [Cr. Code sec. 739; R.S.S. ch. 1, sec. 52; R.S.S. ch. 62, sec. 8; R.S.S. ch. 108, sec. 51, considered; R. v. Cantillon, 19 O.R. 197; and R. v. Skinner, 9 Can. Cr. Cas. 558, distinguished.]

Rex v. Schilling, 21 D.L.R. 60, 23 Can. Cr. Cas. 380, 8 S.L.R. 70, 30 W.L.R. 463, 7 W.W.R. 1112.

(§ V—52)—DEFAULT IN PAYING FINE.

Where imprisonment is imposed in the first instance for a first offence against the Canada Temperance Act, it is limited to one month under sec. 127 of that Act; but where a fine is imposed in the first instance, the imprisonment which may be directed in default of payment of the fine may be for any term not exceeding three months under Cr. Code sec. 739. [R. v. Stafford, 1 Can. Cr. Cas. 239; R. v. Horton, 3 Can. Cr. Cas. 84, 34 N.S.R. 217; R. v. Blank, 10 Can. Cr. Cas. 358, 38 N.S.R. 337, followed.]

Ex parte Richard; Rex v. Steeves, 24 Can. Cr. Cas. 183, 42 N.B.R. 596.

(§ V—53)—INCREASING COSTS VERBALLY AWARDED—ERROR IN CALCULATION.

A justice making a summary conviction and imposing a fine and costs to an amount then stated may, at least before making his minute of adjudication or the formal convic-

tion, correct in the presence of defendant an error in the calculation of the costs, although the sum first mentioned is increased.

Rex v. Dickey, 25 Can. Cr. Cas. 55, 9 W.W.R. 142, 32 W.L.R. 404.

VI. Record of conviction and proceedings.

(§ VI—60)—FORM—DATE OF OFFENCE.

An objection that a summary conviction for common assault assigns no date to the offence is cured under Cr. Code sec. 1124 if the date appears on the depositions.

Rex v. Tally, 21 D.L.R. 651, 23 Can. Cr. Cas. 449, 8 A.L.R. 453, 7 W.W.R. 1178, 30 W.L.R. 396.

(§ VI—60) — IRREGULARITY IN INFORMATION — WAIVER BY FAILURE TO OBJECT.

An irregularity in not re-swearing an information in a summary conviction matter when materially amended at the hearing is waived by proceeding with the trial without taking the objection. [R. v. Lewis, 6 Can. Cr. Cas. 499, approved.]

Rex v. Tally, 21 D.L.R. 651, 23 Can. Cr. Cas. 449, 8 A.L.R. 453, 7 W.W.R. 1178, 30 W.L.R. 396.

(§ VI—60)—DEFECT IN INFORMATION CURED BY DEPOSITIONS.

If the depositions in a summary conviction matter establish such facts as warranted the justice in convicting of the offence indicated by the information, although not stated in the latter in correct form, Code sec. 724 applies to validate the conviction regardless of the defect in the information.

Rex v. Tally, 21 D.L.R. 651, 23 Can. Cr. Cas. 449, 8 A.L.R. 453, 7 W.W.R. 1178, 30 W.L.R. 396.

(§ VI—60)—FINE PAYABLE TO MAGISTRATE— FORMAL CONVICTION.

Where the statute under which the summary conviction is made directs that the fine shall be payable to the convicting magistrate, there is no necessity for a direction in the formal conviction that the fine should be paid to him.

Rex v. Schilling, 21 D.L.R. 60, 23 Can. Cr. Cas. 380, 8 S.L.R. 70, 30 W.L.R. 463, 7 W.W.R. 1112.

(§ VI—61) — AUTHENTICATION OF DEPOSITIONS.

The provision of Cr. Code, sec. 682 (4), that the justice shall sign the depositions is directory only and not mandatory. [Ex parte Doherty, 3 Can. Cr. Cas. 310, 32 N.B.R. 479, followed.]

Rex v. Dickey, 25 Can. Cr. Cas. 55, 32 W.L.R. 404, 9 W.W.R. 142.

VII. Amendment.

VIII. Duplicity and uncertainty.

(See previous Annual Digests.)

SUMMARY JUDGMENT.

See Judgment, I.

SUMMONS.

Generally, see Writ and Process.
Indorsements on writ, see Pleading.

SUNDAY.

- I. JUDICIAL PROCEEDINGS.
- II. SPORT; AMUSEMENTS.
- III. LABOUR AND BUSINESS.
 - A. In general.
 - B. Works of necessity and charity.
- IV. CONTRACTS.
- V. VIOLATION OF SUNDAY LAW AS A DEFENCE.

I. Judicial proceedings.

II. Sport; amusements.

(See previous Annual Digests.)

III. Labour and business.

A. IN GENERAL.

(§ III A—10)—RETAIL SALES OF FRUITS AND CIGARS — AUTHORIZATION — PROVINCIAL AND FEDERAL LAWS.

Sec. 4466, R.S. Que., 1909, preserves, subject to the restrictions therein mentioned, all such liberties as are recognized by the customs of the province of Quebec as to Sunday trading, and on a prosecution in that province under the Lord's Day Act, R.S.C. 1906, ch. 153, for selling, by retail, fruits and tobacco on a Sunday at a place where there is no municipal by-law prohibiting such sales, it may be shewn by parol evidence in defence of the charge that such sales, of which there is no express prohibition in either federal or provincial Acts, are customary in the province of Quebec, and therefore lawful under the exception contained in the Federal Act of matters provided "in any provincial Act or law." R.S.C. 1906, ch. 153, sec. 5. [Kennedy v. Couillard, 17 Can. Cr. Cas. 239, referred to.] Dupuis v. Blouin, 24 Can. Cr. Cas. 441.

B. WORKS OF NECESSITY AND CHARITY.

(§ III B—21) — SUNDAY NEWSPAPER — INCORPORATED COMPANY.

An incorporated company is within the term "person" under the Interpretation Act, C.S.U.C., as regards liability in Ontario under the Lord's Day Act, C.S.U.C., ch. 104, for carrying on the business of a merchant on a Sunday by issuing and selling on that day for purposes of gain an edition of a newspaper the publishing of which on other days was the company's ordinary business; it is not within the exception made by the statute as to works of necessity.

Rex v. World Newspaper Co., 24 Can. Cr. Cas. 145.

IV. Contracts.

V. Violation of Sunday Law as a defence.

(See previous Annual Digests.)

SUPPLEMENTARY PROCEEDINGS.

See Execution, II.

SUPPORT.

Agreement for separate support of wife, alimony, see Divorce and Separation.

Husband's liability for, see Husband and Wife.

In insane asylum, see Incompetent Persons, III.

Support of infants, see Infants; Parent and Child.

Lateral support, see Adjoining Owners; Lateral Support; Easements.

SUPREME COURT OF CANADA.

See Appeal; Constitutional Law; Courts.

SURETIES.

In general, see Principal and Surety; Bonds; Guaranty.

As to indorsers of negotiable instruments, see Bills and Notes.

SURGEONS.

See Physicians and Surgeons; Dentists.

SURVEY.

In expropriation, see Eminent Domain.

For highways, see Highways.

TAXATION.

Of costs, see Costs.

Costs between solicitor and client, see Solicitors.

For revenue, see Taxes; Duties.

For school purposes, see Schools.

Constitutional powers of, see Constitutional Law.

TAXES.**I. POWERS OF TAXATION; WHAT TAXABLE.**

A. Taxation districts.

B. Power of province or territory to tax Federal agencies, instrumentalities and property.

C. Equality; uniformity; discrimination; double taxation.

D. For what purpose or use.

E. What taxable.

F. Exemptions.

II. WHERE TAXABLE; SITUS.**III. ASSESSMENT OF PROPERTY; ENFORCEMENT.**

A. In general; levy and apportionment.

B. Assessment; valuation.

C. Tax officers.

D. Review; correction; equalization; appeal.

E. Personal obligation; action for collection.

F. Sale; deed; rights of purchasers.

G. Redemption; notice to redeem.

H. Who must pay; corporation taxes.

I. Payment; tender; remedies as between individuals.

J. Remission or abatement of taxes.

K. Use of proceeds.

IV. LIEN.**V. SUCCESSION DUTIES.**

A. In general.

B. Exemptions; uniformity.

C. Persons, property, transfers and interests subject to tax.

D. Assessment and collection.

VI. INCOME TAX.

License tax on sale of liquors, see Intoxicating Liquors, II.

As to license generally, municipal powers as to, see License; Municipal Corporations.

As to assessment for public improvements, see Public Improvements.

As to duties, see Duties.

School assessments, see Schools.

Annotations.

Exemption from taxation: 11 D.L.R. 66.

Powers of taxation; competency of province: 9 D.L.R. 346.

Taxation of poles and wires: 24 D.L.R. 669.

I. Powers of taxation; what taxable.**C. EQUALITY; UNIFORMITY; DISCRIMINATION; DOUBLE TAXATION.****(§ I C—21)—TAX ON LAND LOTS—UNIFORMITY—MINIMUM RATE.**

Where a uniform rate of taxes is imposed upon each lot of land, the fact that the statute provides for a minimum rate, in the event the tax payable on any lot or portion of land amounts to less than the required rate, does not violate the rule of uniformity.

Munic. of Bow Valley v. McLean, 24 D.L.R. 587, 9 W.W.R. 84, 32 W.L.R. 357.

D. FOR WHAT PURPOSE OR USE.**(§ I D—40)—NOXIOUS WEEDS ACT—PROPERTY OF NON-RESIDENT—DESTRUCTION OF WOODS—NOTICE—SEED GRAIN ACT.**

Land the property of a non-resident owner, but looked after for him by a resident, to whom the full charge and control has been entrusted cannot be considered "unoccupied" land within the meaning of the Noxious Weeds Act. Land producing wild hay of sufficient value to be sold cannot be considered "not under crop" within the meaning of sec. 8 of the Noxious Weeds Act. [Fraser v. Pere Marquette, 18 O.L.R. 589, applied.] A notification of the destruction of woods under sec. 8 of the Noxious Weeds Act must be given to the owner personally or shown to have been received by him. Compliance with the requirements of sec. 13 of the Municipalities Seed Grain Act as to the prior passing of an authorizing by-law is necessary to create a charge upon the lands sown or intended to be sown.

Re Rur. Mun. of Fertile Belt, 9 W.W.R. 103, 32 W.L.R. 267.

E. WHAT TAXABLE.

(*§ I E 1—45*)—MUNICIPAL TAXATION—OCCUPANTS OF GOVERNMENT LANDS.

Lands specifically assigned to a land company under its contract with the Government for the purchase of Dominion Crown lands are subject to taxation of the company's interest therein as an "occupant" under the Rural Municipalities Act, Alta., although the ownership when acquired is to be subject to certain conditions imposed by the Irrigation Act.

Munic. of McLean v. Southern Alberta Land Co., 22 D.L.R. 102, 30 W.L.R. 540.

[Affirmed in 23 D.L.R. 88.]

(*§ I E 1—48a*)—PURCHASE OF CROWN LANDS—OCCUPANCY.

One holding land under a conditional contract of sale from the Crown, but not in actual occupancy thereof, is for the purpose of taxation, nevertheless, an "occupant" within the meaning of the Alberta Rural Municipality Act, although the land itself is exempt from taxation by reason of its ownership by the Crown.

Munic. of McLean v. Southern Alberta Land Co., 23 D.L.R. 88, 8 W.W.R. 1066, 31 W.L.R. 725, affirming 22 D.L.R. 102.

(*§ I E 1—48a*)—REAL ESTATE—BUILDINGS AND IMPROVEMENTS—POLES AND WIRES.

Under the Municipal Code of the Province of Quebec, buildings and improvements, including poles and wires affixed to land, cannot be taxed as real estate apart from the land to which they are attached.

Montreal Light, Heat & Power Co. v. Chambly Basin, 24 D.L.R. 665.

(*§ I E 1—48a*)—RAILWAY SUBSIDY LANDS—INTEREST OF GRANTEE CONFIRMED BY STATUTE.

By an agreement, executed in 1898, H. agreed to sell to A. and S. certain subsidy lands of a railway company, and it was therein provided that the moiety of the lands should be subsequently conveyed to H., but no formal instrument was ever executed for the purpose of vesting this interest in him. In 1912 an agreement was entered into by all the persons interested in the lands and the Crown for the re-purchase by the Government of British Columbia of the unsold portions of the lands, and this latter agreement was validated by the Railway Subsidy Lands Re-purchase Act, 2 Geo. V., ch. 37 (B.C.) (to which it was annexed as a schedule), which declared that the provisions of the agreement were to be construed as if expressly thereby enacted. The agreement so validated declared, in recitals therein, that H. was entitled to an undivided one-half interest in the lands in virtue of the agreement executed in 1898, that the portions thereof conveyed to the Crown were subject thereto, and that the title should pass to the Crown subject to such estate or interest:—Held, affirming the judgment appealed from (20 B.C.R. 99), that, by the

effect of the validated agreement as supplemented by the legislative declarations in the Railway Subsidy Re-purchase Act, 2 Geo. V., ch. 37, an interest in the lands became vested in H. which was liable to assessment and taxation under the British Columbia Taxation Act, R.S.B.C. 1911, ch. 222, sec. 47, as amended by 3 Geo. V., ch. 71, sec. 5. [*Angus v. Heinze*, 42 Can. S.C.R. 416, referred to.]

Re Heinze; Fleitmann v. The King, 52 Can. S.C.R. 15, 26 D.L.R. 211.

F. EXEMPTIONS.

(*§ I F 1—75*)—CHURCH PROPERTY—SITES—ADJOINING LANDS.

The effect of sub-sec. 1 of sec. 228 of the Municipal Act, R.S.B.C. 1911, ch. 170, is that not only the land upon which the church buildings are actually situated, but also such adjoining property, within reasonable limits, as may be said to constitute a "site," is intended to be exempt from taxation. [See B.C. Stat. 1913, ch. 47, sec. 16, amending above sub-sec. by striking out the words, "and the site thereof."]

City of Victoria v. Trustees of the Church of Our Lord, 25 D.L.R. 617, 9 W.W.R. 173, 32 W.L.R. 330.

(*§ I F 1—75*)—CHURCH BUILDINGS.

Buildings used exclusively as places of worship with grounds surrounding the same upon which no other buildings are erected, are within the meaning of sub-sec. 12 of sec. 3, N.B.S., and are not to be included in the tax valuation.

St. John v. Board of Valuers, 43 N.B.R. 369.

(*§ I F 2—80*)—RAILWAY PROPERTIES—WHAT ARE.

Lands acquired by a railway company for railway purposes, but contingent upon the sanction of the Minister of Railways whether or not they shall become part of the railway, are not within the meaning of clause 13 (e), ch. 3, of the Statutes of B.C. (1910), exempting from taxation all properties and assets of a railway company "which form part or are used in connection with the operation of its railway."

Re Canadian North. Pac. R. Co. & New Westminster, 25 D.L.R. 28, 9 W.W.R. 425, 32 W.L.R. 779.

(*§ I F 3—85*)—PROPERTY OF EDUCATIONAL INSTITUTION—PERIOD.

When it is a question of determining whether or not a property belonging to a scholastic order is exempt from taxes as being intended for purposes of education it is not necessary to consider its position but what it is intended for. Thus it is immaterial to the question that the educational establishment is situated in one municipality and the recreation grounds of the pupils in another; the latter must be considered to be necessary for the education of the pupils in the development of their

physical faculties. A town charter which allows a municipality to make an agreement with the owners of immovables for "fixing the amount at which they will be taxed for a definite period," may make such arrangement for thirty years; art. 4559 of the R.S. of 1888, the Towns and Corporations Act, limiting the exemption from taxes that the town corporations can grant to 20 years does not deprive them of this power.

Town of Maisonneuve v. College Ste. Marie, 24 Que. K.B. 563.

(§ I F 3—85)—EXEMPTION—ORPHAN ASYLUM.
Re I.O.F. and Town of Oakville, 25 D.L.R. 842, 34 O.L.R. 524, 9 O.W.N. 98.

(§ I F 4—90)—INDIAN LANDS.

Indian lands become taxable from the time they are sold by the Government, though it is only by mere location ticket or permission to occupy. An Indian, the same as any other person, can become owner of a lot of land which has formed part of a reserve when this reserve has been regularly surrendered to the Crown; but he does not benefit as to this immovable by any privilege of exemption from taxes or of unseizability. By the terms of arts. 21 and 101 of the Indian Act a located Indian—having the benefit of the privilege of exemption from taxes and unseizability—is an Indian to whom land has been allotted by the tribe while the reserve existed (that is, before it was surrendered to the Crown), and who has continued to occupy it. [Appealed to Supreme Court.]

Doherty v. Giroux, 24 Que. K.B. 433.

II. Where taxable; situs.

(See previous Annual Digests.)

III. Assessment of property; enforcement.

A. IN GENERAL; LEVY AND APPORTIONMENT.

(§ III A—105)—SUBDIVISION LOTS—MODE OF LEVY.

Each lot as it appears on the registered plan of a subdivision is a "lot or portion of land" within the meaning of sub-secs. 2 and 3 of sec. 297 of the Rural Municipality Act (Alta.), as amended by secs. 23 and 24 of ch. 21 of the Acts 1913, and subject to the tax imposed thereby upon each lot and not to the rate of the aggregate assessed value of the land.

Munic. of Bow Valley v. McLean, 24 D.L.R. 587, 9 W.W.R. 84, 32 W.L.R. 357.

(§ III A—105)—SEIZURE FOR ARREARS—GOODS AND CHATTELS OF "OCCUPANT"—THRESHER'S OUTFIT TEMPORARILY ON PREMISES—WRONGFUL SEIZURE—DAMAGES.

Le Bruyne v. Rur. Munic. of Laurier, 25 D.L.R. 746, 8 S.L.R. 251, 9 W.W.R. 682, 33 W.L.R. 107.

B. ASSESSMENT; VALUATION.

(§ III B 1—110)—ON "PERSON" OR "LOT"—AUTHORITY OF BOARD.

In assessing a general rate for a rural

municipality the proper principle to adopt as to a minimum tax is that such tax is applicable to the "person" and not to the "lot," but where a minimum tax is levied under the provisions of the Supplementary Revenue Act each lot is to be assessed. The authority of the local Government Board to deal with matters of assessment dates from September 24, 1914, and accordingly where an assessment for that year has been completed and closed prior to that date, the Board has no authority to open up the assessment for that year although a portion of it has been made on an improper basis.

Parry v. Rur. Mun. of Sherwood, 7 W.W.R. 1244.

(§ III B 1—110)—MINIMUM TAX—"PERSON"—"LOT"—REVISION BY BOARD.

Notwithstanding anything contained in the Rural Municipality Act, the local Government Board may, where it appears desirable, revise and adjust assessments upon giving the proper notices. The minimum tax for municipal and school purposes is applicable to the "person" and not to the "lot." [*Parry v. Sherwood*, 7 W.W.R. 1244, applied.]

Wilson v. Rur. Mun. of Sherwood, 9 W.W.R. 853.

(§ III B 1—110)—VALIDITY OF ASSESSMENTS—LIEN OF MUNICIPALITY—ENFORCEMENT BY SALE—DIRECTIONS—COSTS OF LIQUIDATOR OF COMPANY.

Town of Sturgeon Falls v. Imperial Land Co., 8 O.W.N. 251.

(§ III B 1—116)—DESCRIPTION OF LAND—EFFECT ON TAX SALE PURCHASER.

It is only for the purpose of a tax sale and the conveyance to the tax purchaser that a description of the land in the assessment thereof is required to be sufficient to identify the land and permit of the registration of a transfer; if the ratepayer is personally liable for the taxes on the land and he pays them under protest, it is not open to him to recover them on the ground that the identity of the land was not made clear in the description contained in the assessment roll. [*Toronto v. Russell*, [1908] A.C. 493, specially considered.]

Pearce v. City of Calgary, 23 D.L.R. 296, 9 W.W.R. 195, 31 W.L.R. 208.

[See 9 W.W.R. 668.]

(§ III B 1—116)—WATER POWER AND LANDS—DESCRIPTION—ASSESSMENT AT LUMP SUM.

When immovables are situated on both sides of a river and are acquired with the right to use the water of the river for a water power, but as a matter of fact no works were there to develop it, the following description contained in the valuation roll of the municipality for the purpose of taxation, to wit, "basin water power," is not indicative that the water power which does not exist is taxed, but is a mere description of the lands which are taxed; and this tax is

not illegal on the ground that the lands and the water power being taxed for a lump sum, the tax was for a thing that did not exist.

Westbury v. Sherbrooke, 47 Que. S.C. 82.

(§ III B 2—125) — LAND — VALUATION OF BLOCKS—FRONTAGE.

A block of land forming one parcel and held under one title may be assessed as one parcel although it is of a varying character which makes one portion much more valuable than other portions; the assessor will be assumed to have taken the varying values of the different frontages into consideration in fixing a lump sum or average rate for the entire block of land.

Pearce v. City of Calgary, 23 D.L.R. 296, 9 W.W.R. 195, 31 W.L.R. 208.

(§ III B 2—125)—“FAIR ACTUAL VALUE.”

The “fair actual value” of land for assessment purposes, where no present market is in sight, is what a prudent person, attempting to measure the forces at work making for a present shrinkage in value and again likely to arise making for an increase of value, would be likely to agree to pay in way of investment for such lands (per *Idington, J.*). It is entirely fallacious to suppose that the value of land is the price which it will command for an immediate sale in the open market. (Per *Fitzpatrick, C.J.*, dissentientem.)

Pearce v. Calgary, 9 W.W.R. 668.

[See 23 D.L.R. 296.]

(§ III B 2—125)—DECLINED VALUES.

If the condition of land values in a city are abnormal in that there is practically no market because of the collapse of a real estate boom, the assessor must endeavour to fix the value for assessment purposes on a normal footing under a statute which directs that property shall be estimated at its actual cash value as it would be appraised in payment of a just debt from a solvent debtor. (Per *Macdonald, C.J.A.*)

Charleson v. Byrne, 22 D.L.R. 240, 21 B.C.R. 281, 8 W.W.R. 930, 31 W.L.R. 309.

(§ III B 2—125)—VALUATION BELOW ACTUAL VALUE—VALIDITY.

A municipal valuation roll in which all properties as a whole are valued below their actual value is illegal and will be annulled by the Court.

La Cie. D'Approvisionnement D'Eau v. La Ville Montmagny, 25 D.L.R. 292, 24 Que. K.B. 416.

(§ III B 2—125)—ASSESSMENT BELOW ACTUAL VALUE—GOOD FAITH—UNIFORMITY.

A valuation roll is not a nullity for the reason merely that the valuers have assessed in it the taxable properties for a third of their actual value only if this low and insufficient valuation has been made impartially, in good faith, in a uniform manner and in proportion to the respective values of each of the properties situated in the municipality.

Rivard v. Parish of Wickham West, 47 Que. S.C. 441.

(§ III B 2—125)—REVISION OF VALUATION ROLL—HOMOLOGATION.

Under our municipal laws, the preparation of the valuation roll by the valuers and its deposit with the secretary-treasurer is not a completion of the roll. It is completed and ready for homologation only when it has been revised by the council, or it is decided that no revision is necessary. The word “completion” of art. 4511, R.S. 1909, must be construed in that sense. Therefore, the council may, at any time, after the expiry of the delays prescribed for the examination of the roll, on complaints or not, revise and homologate the valuation roll.

Whelan v. Town of Aylmer, 48 Que. S.C. 204.

(§ III B 2—125)—COMMON STANDARD.

In order to secure under the *Rates and Taxes Act* (N.B.), 3 Geo. V., ch. 21, a common standard of valuation for general county purposes, the value of property as fixed by special Acts for assessment purposes is the value to be taken, and not its full value as provided by sec. 4 of the Act.

St. John v. Board of Valuers, 43 N.B.R. 369.

(§ III B 2—132) — RAILWAY STRUCTURES — BRIDGES.

A railway bridge constructed across a river in pursuance of a Crown grant is a “structure on railway lands” within the meaning of sub-sec. 3 of sec. 47 of the *Assessment Act*, R.S.O. 1914, ch. 195, exempting same from assessment by the township municipality.

Re Ottawa & New York R. Co. and Tp. of Cornwall, 23 D.L.R. 610, 34 O.L.R. 55, 8 O.W.N. 369.

[Affirmed by Can. Sup. Ct., Feb. 14, 1916.]

(§ III B 2—132) — RAILWAYS — LOCAL IMPROVEMENT CHARGES.

The meaning and intention of the agreement between the province of Manitoba (ch. 39, 1 Edw. VII. 1901) and the Canadian Northern Railway Company, and the interpretation to be put on the legislation affecting it, is that the burden assumed by the plaintiff under the agreement is in lieu of all taxes, rates and assessments, including all charges for local or municipal purposes.

Canadian North. R. Co. v. City of Winnipeg, 9 W.W.R. 902.

(§ III B 2—133)—EXPRESS AND TELEPHONE COMPANIES—FINANCIAL INSTITUTIONS.

Neither an express nor a telegraph company can be classed as a “bank, loan company or financial institution” within the meaning of sec. 302 (2) of the *Towns Act* (Sask.), providing the mode of their assessment for taxation.

Can. North. Express Co. v. Rosthern; *Can. North. Telegraph v. Rosthern*, 23 D.L.R. 64, 8 S.L.R. 285, 8 W.W.R. 1181, 31 W.L.R. 868.

C. TAX OFFICERS.

(§ III C—134a)—BOARD OF ASSESSORS—
MODE OF ASSESSMENT.

It is not necessary that the entire board of assessors unite in an inspection of property for the purpose of assessing it for taxation; it is sufficient if each member ascertains the values as he thinks them to be and reports the facts and his views to the other members of the board for final determination, and no member of such board is justified in refusing to act in a separate capacity for the purpose of inspecting the property when required to do so by the municipal authorities.

The King v. City of Halifax; Re Stevens, 25 D.L.R. 113.

D. REVIEW; CORRECTION; EQUALIZATION;
APPEAL.

(§ III D—135)—ILLEGAL VALUATION ROLL—
SETTING ASIDE—JURISDICTION OF SUPERIOR COURT.

The Cities and Towns Act (Que.), providing an appeal from an illegal valuation to the Circuit Court, does not exclude the jurisdiction of the Superior Court over actions to annul the whole of an illegal valuation roll.

La Cie. D'Approvisionnement D'Eau v. La Ville De Montmagny, 25 D.L.R. 292, 24 Que. K.B. 416.

(§ III D—135)—SPECIAL ASSESSMENT UNDER
LOCAL IMPROVEMENT BY-LAW—DECISION
OF COURT OF REVISION—APPEAL FROM TO
COUNTY COURT JUDGE—TIME FOR—AS-
SESSMENT ACT, R.S.O. 1914, CH. 195,
SECS. 57, 72—LOCAL IMPROVEMENT ACT,
R.S.O. 1914, CH. 193, SEC. 39 (2)—ASCE-
RTAINING DATE OF DECISION—DAY ON
WHICH PARTIES NOTIFIED THEREOF—OB-
JECTION TO RIGHT OF APPEAL—WAIVER.

Re Kemp and City of Toronto, 8 O.W.N. 32.

(§ III D—136)—EXCESSIVE ASSESSMENT—
APPEAL FROM—REDUCTION.

On an appeal by a public utility company to the Ontario Railway and Municipal Board against the company's assessment, if the appellants prove that the amount assessed for buildings was excessive the onus is not upon them to prove that the total was likewise excessive; a reduction of the total assessment should be made in respect of the excess in the building valuation unless the question of increase of the assessment under the other heads is before the Board on the evidence or upon an inspection of the property.

Re Ontario and Minnesota Power Co. and Town of Fort Frances, 22 D.L.R. 878, 8 O.W.N. 216.

[Referred to in 22 D.L.R. 881.]

(§ III D—138)—ASSESSMENT OF POWER PLANT
—REVIEW—APPEAL.

The effect of the repeal of sec. 52 of the Ontario Railway and Municipal Act of 1906 by Ont. Stat. 3 & 4 Geo. V. ch. 37, on the re-

enactment of that Act, May 6, 1913, was that as to a subsequent decision of the Court of Revision of a town in a territorial district assessing a power plant either the right of appeal directly to the Ontario and Municipal Board was taken away until the new Municipal Act, 1913, 3 & 4 Geo. V. ch. 43 came into force on July 1, 1913, or the right of appeal, left as it existed before the statute of 1906, was one to a Judge in Chambers, even if sec. 13 of the Assessment Amendment Act of 1913 did not impliedly repeal the provisions as to appeal contained in the Act relating to territorial districts. [Re Fort Frances Assessment, 11 D.L.R. 564, 27 O.L.R. 622, referred to.]

Re Ontario and Minnesota Power Co. & Town of Fort Frances, 22 D.L.R. 701, 32 O.L.R. 235, 7 O.W.N. 289.

(§ III D—138)—APPEAL—REVIEW OF LAW.

On an appeal to the Appellate Division of the Supreme Court of Ontario from the Ontario Railway and Municipal Board, in respect of the assessment of the property of a public utility company, the question determined is one of law that the Board should, on the facts as found, fix the value of the property at a particular figure; the Appellate Division does not decide as a matter of fact that such is the value of the property, but to save any question as to the effect of the opinion of the Appellate Division, its certificate may contain a statement that in the opinion of the Court it would have no effect as *res judicata* in any future assessment. [Re Ontario and Minnesota Power Co. and Fort Frances, 8 O.W.N. 216, 22 D.L.R. 878, referred to.]

Re Ontario and Minnesota Power Co. & Town of Fort Frances, 22 D.L.R. 881, 8 O.W.N. 303.

(§ III D—138) — ASSESSMENT OF EXEMPT
PROPERTY—CHURCH PREMISES—MODE OF
REVISION.

It is not necessary to appeal to the Court of Revision from an assessment of church property, which is exempted by statute, in order to be relieved from liability for such taxes, and it is open to the defendant to refuse payment of the taxes sought to be imposed by such improper assessment. [Re Sisters of Charity Assessment, 15 B.C.R. 344, 44 Can. S.C.R. 29, distinguished.]

City of Victoria v. Trustees of the Church of Our Lord, 25 D.L.R. 617, 9 W.W.R. 173, 32 W.L.R. 330.

F. SALE; DEED; RIGHTS OF PURCHASERS.

(§ III F—145)—PERSON ASSESSED MAY BUY—
TITLE ACQUIRED.

The person assessed may himself buy in the property at a tax sale under the Assessment Act, R.S.O. 1914, ch. 195, to perfect his prior defective title, and his tax deed will create a new commencement of title free from prior adverse possession. [Stewart v. Taggart, 22 U.C.C.P. 284, and Tomlinson v. Hill, 5 Gr. (Ont.) 231, applied.]

Soper v. City of Windsor, 22 D.L.R. 478, 32 O.L.R. 352, 7 O.W.N. 373.

(§ III F-147)—**SALE EXTINGUISHING RESTRICTIVE BUILDING COVENANT.**

A restrictive building covenant contained in a deed to the land is extinguished upon a tax sale of the property, and will convey it to the tax purchaser free from any claim under the covenant. [*Tomlinson v. Hill*, 5 Gr. 231; *Soper v. Windsor*, 22 D.L.R. 478, followed; *Essery v. Bell*, 18 O.L.R. 76, considered; *London County Council v. Allen*, [1914] 3 K.B. 642; *Re Nisbit, etc.*, [1905] 1 Ch. 391; [1906] 1 Ch. 386, applied.]

Re Hunt and Bell, 24 D.L.R. 590, 34 O.L.R. 256, 8 O.W.N. 581.

(§ III F-148a)—**TAX DEED—SETTING ASIDE.**

A tax deed in British Columbia, made in 1898, can be annulled only upon the grounds stated in R.S.B.C. 1911, ch. 222, sec. 255.

Heron v. Lalonde, 22 D.L.R. 37, 8 W.W.R. 78.

[Affirmed in 24 D.L.R. 851.]

(§ III F-148a)—**PREMATURE EXECUTION OF DEED—VALIDITY—WANT OF TENDER.**

A tax deed will not be set aside because prematurely executed where no tender is made by the owner within the period of redemption allowed by the statute. [*Heron v. Lalonde*, 22 D.L.R. 37, affirmed.]

Heron v. Lalonde, 24 D.L.R. 851, 9 W.W.R. 440, 32 W.L.R. 861.

(§ III F-148a)—**TAX SALE—ACTION TO SET ASIDE SALE MADE FOR TWO YEARS' TAXES IN ARREAR—NO ARREARS FOR ONE YEAR—VALIDITY OF ASSESSMENT—IRREGULARITY—VALIDATING ENACTMENT—ASSESSMENT ACT, 4 EDW. VII. CH. 23, SEC. 22, SUB-SEC. (1) (D), SEC. 172—COSTS—SUCCESSFUL APPEAL.**

Millar v. Patterson, 7 O.W.N. 714.

H. WHO MUST PAY; CORPORATION TAXES.

(§ III H-156)—**CORPORATION TAX—BUSINESS TAX—SIMILARITY.**

Section 18 of the Corporation Taxation Act (Sask.), prohibiting the imposition of any similar tax on any company or corporation paying the corporation tax, has no reference to an assessment of a company for a business tax. [*Dominion Express Co. v. City of Regina*, 4 S.L.R. 34; *Dominion Express Co. v. City of Brandon*, 20 Man. L.R. 304, referred to.]

Can. North. Express Co. v. Rosthern; *Can. North. Telegraph v. Rosthern*, 23 D.L.R. 64, 8 S.L.R. 285, 8 W.W.R. 1181, 31 W.L.R. 868.

I. PAYMENT; TENDER; REMEDIES AS BETWEEN INDIVIDUALS.

(§ III I-164a)—**EXCESSIVE ASSESSMENT OF ACREAGE—REVIEW—ACTION FOR RECOVERY BACK—RES JUDICATA.**

Under the Assessment Act, Alta., a Court of Revision, and on appeal from that Court

the District Court Judge, has jurisdiction to entertain a complaint in respect of any or all of the matters which make up an assessment for taxation purposes, including the ascertainment of the acreage of the land to be taxed under any assessment; where uncontroverted evidence was given by the municipality on an assessment appeal as to such acreage and the assessment was fixed on that basis, such adjudication if not appealed from becomes *res judicata*, and it is not open to the ratepayer by separate action to recover from the municipality the overpayment resulting from the area of the land being afterwards found to be less than the acreage upon which the assessment was fixed. [*Toronto Railway v. Toronto*, [1904] A.C. 809, distinguished.]

Pearce v. City of Calgary, 23 D.L.R. 296, 9 W.W.R. 195, 31 W.L.R. 208.

[See 9 W.W.R. 668.]

J. REMISSION OR ABATEMENT OF TAXES.

(§ III J-165)—**RECOVERY BACK—OVER-ASSESSMENT—MODE OF OBJECTION.**

Where a municipality has the right under statute to impose a tax, and the person assessed in respect thereof does not appeal against the quantum of the assessment, he cannot in an action to recover the taxes which he was compelled to pay be heard to say that he was over-assessed.

Can. North. Express Co. v. Rosthern; *Can. North. Telegraph v. Rosthern*, 23 D.L.R. 64, 8 S.L.R. 285, 8 W.W.R. 1181, 31 W.L.R. 868.

IV. Lien.

(§ IV-175)—**LIQUIDATION OF COMPANY NOT AFFECTING LIEN—EXTENT OF PREFERENCE.**

A preferential lien for taxes which the City of Halifax has upon personal property during the civic year for which the taxes are imposed under secs. 449 and 450 of the Halifax charter, is not abrogated by the liquidation of the company liable for such taxes under a winding-up order made under the Dominion Winding-up Act; but such priority does not extend to the taxes for prior years as to which no effectual levy had been made.

Re City of Halifax & Kane, 23 D.L.R. 158, 49 N.S.R. 93.

V. Succession duties.

A. IN GENERAL.

(§ V A-180)—**PROVINCIAL JURISDICTION.**

So far as it relates to property within the province of Alberta, the Succession Duties Ordinance provides a scheme of direct taxation and is within the competence of the provincial Legislature. [*Cotton v. Rex*, 15 D.L.R. 283, [1914] A.C. 176; *Rex v. Lovitt*, [1912] A.C. 212, considered; *Re Cust*, 18 D.L.R. 647, reversed.]

Re Cust, 21 D.L.R. 366, 8 A.L.R. 308, 7 W.W.R. 1286, 30 W.L.R. 671.

(§ V A—180)—PROPERTY IN ONE PROVINCE—
DOMICILE IN ANOTHER—SPECIALTY DEBTS.

A testator having his domicile in one province and having in his possession at the time of his death debts secured by mortgages of real estate, situate in another province, where the mortgagors have their domicile, such debts are specialty debts, and are liable to duty under the Succession Duty Act, C.S.N.B. 1903, ch. 17.

Receiver-Gen'l of New Brunswick v. Rosborough, 24 D.L.R. 354, 48 N.B.R. 258.

(§ V A—183a)—RATE OF TAXATION—AGGREGATE VALUE OF ESTATE.

The aggregate value of all the estate owned by the deceased at the time of his death is the basis on which the rate of taxation is to be computed and fixed under clause (a), sec. 5, of the Succession Duty Act, and not the aggregate value of the property liable to succession duty.

Receiver-Gen'l of New Brunswick v. Rosborough, 24 D.L.R. 354, 48 N.B.R. 258.

C. PERSONS, PROPERTY, TRANSFERS AND
INTERESTS SUBJECT TO TAX.

(§ V C—191)—SPECIALTY DEBTS—AGREEMENT
FOR SALE OF LAND.

Agreements for sale of lands in Saskatchewan, in the possession of a party domiciled in Manitoba at the time of his death, by which he was to remain the owner of said lands until they were fully paid for, are specialty debts, and as such constitute property and are liable to succession duty there. [Marryat v. Marryat, 28 Beav. 224, and Isaacson v. Harwood, 3 Ch. App. 224, applied.]

Standard Trusts Co. v. Treas. of Manitoba, 23 D.L.R. 811, 51 Can. S.C.R. 428, 9 W.W.R. 1226, affirming 18 D.L.R. 144, 24 Man. L.R. 310.

(§ V C—198)—DEBENTURE STOCK—SITUS.

Debenture stock is not a specialty debt, and where such stock is of a city in another province from that in which the testator had his domicile, and can only be transferred at the office of the treasurer of that city, it is not subject to succession duty in the province where the testator had his domicile.

Receiver-Gen'l of New Brunswick v. Rosborough, 24 D.L.R. 354, 48 N.B.R. 258.

(§ V C—198)—MONEY IN BANK IN OTHER
PROVINCE.

Money on deposit in a bank situate in another province from that in which the testator had his domicile at the time of his death, is not liable to succession duty in the province where the testator was domiciled at the time of his death.

Receiver-Gen'l of New Brunswick v. Rosborough, 24 D.L.R. 354, 48 N.B.R. 258.

(§ V C—198)—SUCCESSION DUTY—MORTGAGES
ON LAND OUT OF PROVINCE—SPECIALTY
DEBTS—DOMICILE OF TESTATOR—SUCCESSION
DUTY ACT, R.S.O. 1914, CH. 24.

Re Fisher, 7 O.W.N. 754.

VI. Income tax.

(§ VI—220)—INCOME TAX—NON-RESIDENT—
ADOPTION OF ASSESSMENT ROLL OF PREVIOUS
YEAR—ASSESSMENT ACT, R.S.O. 1914,
CH. 195, SECS. 12, 56—COLLECTOR'S
ROLL—SEC. 99 OF ACT—OMISSION OF
PARTICULARS—NULLITY—INACCURACIES IN
ROLL, OATH, AND CERTIFICATE.

City of Berlin v. Anderson, 7 O.W.N. 790.

TELEGRAPHS.

Regulation of, see Railway Commission.

(§ II D—51)—MISDELIVERY OF MESSAGE—
LIMITATION OF LIABILITY—PUBLIC POLICY.

A telegraph company which receives a message from England addressed to a person in Quebec is bound to deliver it as soon as received, and if by error it delivers it to another person it is liable in damages for the loss suffered by the person to whom it was addressed. Such company cannot by a clause for immunity relieve itself from liability, the obligation of the company to deliver telegraph messages being based upon a public law for the interest of the public.

Dominion Fish Co. v. G.N.W. T. Co., 47 Que. S.C. 225.

TELEPHONES.

Regulation of, see Railway Commission.

(§ I—4)—LONG DISTANCE TOLLS—AGREEMENT.

Under an agreement between telephone systems imposing "another line" charge in addition to the long distance tolls of the Bell Company, "each party to receive its own charge and the party on whose line the call originates shall collect and be responsible for such charge, provided, however, that the Bell Company shall not be obliged to collect and be responsible for the Proprietor's charge if the Proprietor fails to collect a like charge on messages originating on the Proprietor's system." The obligation in respect of the "other line" charge is mutual, that is to say, if the Bell Company is asked to collect the charge of the applicant company in respect of the message originating on the Bell Company's line, the applicant company must similarly collect in respect of a message originating on its own line, and this obligation attaches to all calls.

Ernesttown Rural Telephone Co. v. Bell Telephone Co., 18 Can. Ry. Cas. 325.

(§ I—4)—BUSINESS OR RESIDENCE TOLL—
CLERGYMAN.

Under the provisions of sec. 315, a clergyman is entitled to be charged the residence toll and not the business toll for the use of the telephone installed in his residence.

Desroches v. Bell Telephone Co., 18 Can. Ry. Cas. 322.

(§ I—4)—INCREASE IN RATES—REFUSAL TO
PAY—REMOVAL OF PHONE—NOTICE—MU-

**MUNICIPAL POWERS—NATURE OF RENTAL—
BAILMENT—DURATION OF CONTRACT.**

Edwards v. City of Edmonton, 25 D.L.R. 825, 8 W.W.R. 441.

TENANTS.

In general, see *Landlord and Tenant*.
Compensation to in expropriation proceedings, see *Eminent Domain; Damages*, III L.

TENDER.

Of deed, see *Deed; Vendor and Purchaser*.
Tendering payment of taxes, see *Taxes*.
Alleging tender, see *Pleadings*.

Annotation.

Requisites and sufficiency of tender: 1 D.L.R. 666.

TESTAMENTARY CAPACITY.

See *Wills*.

THEATRES.

See *Amusements*.
Regulation of, see *License; Municipal Corporations*.

THEFT.

As to hearing and procedure in general, see *Criminal Law; Indictment and Information*.

**(§ I—1)—WHAT SUBJECT OF—WATER FROM
WATER WORKS—FRAUDULENT TAKING.**

Water conveyed in pipes may be the subject of larceny at common law, and where it was deliberately taken from the pipes through which an adjoining property owner got his water supply from the city municipality at a flat rate, after the refusal of permission from such owner and without any permission from the city, the person wrongfully appropriating the water is properly convicted on a charge alleging the theft thereof from the city. [*Ferens v. O'Brien*, 11 Q.B.D. 21, 52 L.J.M.C. 70, and *R. v. White*, 1 Dears. C.C. 203, 22 L.J.M.C. 123, applied.]

Rex v. Hutton, 24 Can. Cr. Cas. 212, 19 W.L.R. 907.

**(§ I—1)—OF GROWING TREES OR SHRUBS—
PROCEDURE—PROOF OF DAMAGE.**

Where it is sought to make a summary conviction under Cr. Code, sec. 374, for stealing growing trees or shrubs of less value than \$25, the value should appear in the information, it being essential to the jurisdiction of the Justice that the amount of the damage be at least twenty-five cents; the inclusion, as part of the penalty, of the sum of one dollar for the damage or injury done does not establish the Justice's jurisdiction to make a conviction where no value was proved before him; nor could the conviction be supported as for the indictable offence of theft under \$10 triable under Cr. Code, sec. 773, by a magistrate having summary trials jurisdiction under sec. 771, as

there was no proof that the value of the property stolen did not exceed \$10 nor did the record shew that the accused, who had pleaded "not guilty," was put to his election of mode of trial under Cr. Code sec. 778, as would be necessary for the indictable offence of theft of the wood after cutting the trees into firewood. [*R. v. Beauvais*, 7 Can. Cr. Cas. 494, referred to.]

Ex parte Legere; Rex v. Dugas, 24 Can. Cr. Cas. 377, 43 N.B.R. 357.

(§ I—1)—MAILABLE MATTER.

Criminal Code, sec. 400, originated with the Post Office Act, while the preceding sec. 399 originated in the Larceny Act, and in reconciling the language of these two sections, which in their ordinary meaning might seem to apply different punishments for the same offence, the words, "hereby declared to be an indictable offence," contained in sec. 400, must be limited at least to stolen property as to which the offence has been declared to be theft by some specific reference in the Code apart from the general declaration of sec. 399, if indeed it may not be further limited to such chattels, parcels or other things, the stealing whereof was specially punishable under the Post Office Act. [Note the language of Code sec. 6 as to the meaning of expressions where the subject-matter is dealt with in another statute, and compare secs. 364, 365 and 366 taken from the Post Office Act.]

Rex v. Nimchonok, 25 Can. Cr. Cas. 66, 9 W.W.R. 598, 32 W.L.R. 933, 26 D.L.R. 38.

**(§ I—1)—GOODS UNDER SEIZURE BY SHERIFF
—BOND TAKEN FROM DEBTOR.**

A sheriff who has seized under a writ of execution for debt a number of hogs in possession of the execution debtor, and who at the latter's request takes a bond from the debtor and his surety for the purpose of continuing the seizure without the expense of leaving a man in possession, has a special property or interest in the hogs sufficient to make the selling of the same by the accused while under such bond a theft thereof under Cr. Code secs. 347 and 386; the seizure was valid as against those who had notice of it, and the accused could not justify by setting up the alleged title of another and the latter's authorization to sell on his behalf. [*Dodd v. Vail*, 9 D.L.R. 534, 6 S.L.R. 22, affirmed in *Dodd v. Vail* (No. 2), 10 D.L.R. 694, 23 W.L.R. 903, applied; *Dixon v. McKay*, 21 Man. L.R. 762, and *R. v. Knight*, 1 Cr. App. R. 186, referred to.]

Rex v. Hryczuk, 25 D.L.R. 490, 24 Can. Cr. Cas. 283, 8 S.L.R. 350, 8 W.W.R. 1169, 31 W.L.R. 786.

**(§ I—1)—FROM HOLDER OF HIRE-PURCHASE
AGREEMENT—COLOUR OF RIGHT—QUES-
TION OF FACT.**

The question whether a person charged with theft of property under sec. 347 of the Criminal Code, from the holder under a hire-purchase agreement was acting without colour of right, is a question for the jury, and should be passed upon by them, even

though the taking was by stealth and not authorized by the contract.

The King v. Comeau, 43 N.B.R. 177, 25 Can. Cr. Cas.

(§ I-7)—OBTAINING MONEY FROM IMBECILE—KNOWLEDGE OF IMBECILITY.

If a person gets another to give him money to which he has no right or claim, knowing the giver to be an imbecile and that consequently the latter could have no will to give the money to him, he is properly convicted of theft. (Per Harvey, C.J., and Simmons, J., in a divided Court.)

Rex v. Wallace, 24 D.L.R. 825, 8 A.L.R. 472, 24 Can. Cr. Cas. 95.

(§ I-12)—RECENT POSSESSION—EVIDENCE.

On a charge of theft the presumption arising from recent possession of the stolen goods may be applied against the accused in conjunction with direct evidence.

Rex v. McClain, 23 D.L.R. 312, 23 Can. Cr. Cas. 488, 8 A.L.R. 73, 7 W.W.R. 1134, 30 W.L.R. 388.

(§ I-20)—ABSTRACTING ELECTRICITY—DIRECTING COMPENSATION TO OWNER.

Where no claim for compensation under Code sec. 1048 was made by the electric company from which the accused is found guilty of theft in fraudulently abstracting electricity (Cr. Code, sec. 351), the conviction is irregular in directing that part of the fine be paid to the electric company.

Rex v. Sperdakes, 24 Can. Cr. Cas. 210, 40 N.B.R. 428.

THIRD PARTY.

See Parties.

THREATS.

Duress, undue influence in procuring contract or will, see Wills; Deeds; Contracts; Bills and Notes.

TIMBER.

Cutting and taking out timber, woodmen's liens, see Logs and Logging.

(§ I-1)—LICENSES TO CUT—RENEWAL—COMPLIANCE WITH REGULATIONS.

The departmental regulation declaring that holders of licenses to cut timber on Indian lands shall be entitled to renewal if they have complied with existing regulations does not confer a right of perpetual renewal, as such would be inconsistent with the limitation of licenses to twelve months under the Indian Act, R.S.C. 1906, ch. 81. [Booth v. The King, 10 D.L.R. 371, 14 Can. Exch. 115, affirmed.]

Booth v. The King, 21 D.L.R. 558, 51 Can. S.C.R. 20.

(§ I-3)—RIGHTS OF PURCHASER—LIABILITY OF RAILWAY COMPANY FOR DESTRUCTION.

On a licensee under a timber license from the Department of the Interior making a sale of the logs to another who did the lumbering, the logs when cut became the

personal property of the buyer, and he has the right to maintain an action against a railway company through whose negligence the same were destroyed while still on the limits, although such buyer had no assignment of the Government license. [Booth v. McIntyre, 31 U.C.C.P. 183, distinguished.]

Dutton v. C.N.R. Co., 23 D.L.R. 43, 31 W.L.R. 367, 19 Can. Ry. Cas. 72.

TIME.

For taking appeal, see Appeal.

For giving notice of injury to property, see Carriers; Railways; Street Railways; Eminent Domain.

For presenting cheque for payment, see Cheques; Bills and Notes.

As essence of contract, see Contracts; Vendor and Purchaser; Sale.

For filing mechanics' liens, see Mechanics' Liens.

For commencing actions, laches, see Estoppel; Limitations of Actions.

TOLLS AND TOLL ROADS.

Regulation of tolls, see Carriers; Railway Commission.

(§ I-9)—POWERS OF TOLL ROAD COMPANY—EXEMPTED VEHICLES—AUTOMOBILES AND TRUCKS.

Toll roads are public roads where anybody has the right to pass, provided tolls authorized by law are paid, but a toll road company can demand a toll only on vehicles and animals mentioned in the Acts governing it, and the enumeration of those carriages and animals in art. 6386, R.S. 1909, not including automobile trucks and automobiles, and a by-law of a toll company imposing a toll on vehicles exempted by the Acts is ultra vires and null.

By-Town & Aylmer Union Co. v. Blackburn, 24 D.L.R. 747, 24 Que. K.B. 118.

TORTS.

Survival of right of action for, see Death.

Assignability of right of action for, see Assignment.

Conspiracy to commit, see Conspiracy.

Contribution between wrongdoers, joint liability, see Contribution; Joint Creditors and Debtors.

Measure of damages for generally, see Damages, III.

Liability of husband for wife's torts, see Husband and Wife.

Liability for infants' torts, see Infants; Parent and Child.

Injunction against tortious acts, see Injunction.

For various acts of negligence, see Negligence; Railways; Street Railways; Carriers; Master and Servant; Municipal Corporations; Highways; Admiralty.

TOWAGE.

See Salvage; Admiralty; Shipping.

TOWNS.

See also Municipal Corporations.

(§ I—1)—FORMATION OF VILLAGE—PETITION
—MODE OF ATTACKING PROCEEDINGS.

In placing their signatures to a petition asking for the erection of a territory into a village the electors owning land and dwelling in this territory thereby agree to the cognizance of the petition taken by the County Council. It is not allowable for them to withdraw their signatures when they have been voluntarily given. Any interested party who wishes to attack the proceedings of the County Council upon such petition should not bring his action to quash these proceedings until the special superintendent appointed by the County Council has made his report and the Council has acted upon it.

Rioux v. Village of Témiscouata, 47 Que. S.C. 481.

TRADE-MARK.

- I. IN GENERAL; RIGHT TO.
- II. WHAT MAY BE.
- III. TRANSFER OF.
- IV. INFRINGEMENT.
- V. DEFENCES.
- VI. REGISTRATION.

See also Trade-name; Patents.

Jurisdiction of Court to rectify register, see Courts, III C.

Annotation.

Trade-name; user by another in a non-competitive line: 2 D.L.R. 380.

I. In general; right to.

(§ I—1)—APPLICATION FOR — DESCRIPTION
AND DRAWING.

In applying for a trade-mark under the Canadian Statute the applicant must describe in writing what he claims as his mark. A drawing must also be filed. But the claim in the written application cannot be extended by reason of something appearing in the drawing which has not been claimed.

Mickelson Shapiro Co. v. Mickelson Drug & Chemical, 15 Can. Ex. 276.

II. What may be.

(See previous Annual Digests.)

III. Transfer of.

(§ III—10)—ASSIGNABILITY.

A trade-mark cannot be assigned in gross [Gegg v. Bassett, 3 O.L.R. 263, approved; Smith v. Fair, 14 Ont. R. 736, referred to.]

Re Vulcan Trade-mark, 22 D.L.R. 214, 15 Can. Ex. 265.

[Affirmed in 24 D.L.R. 621, 51 Can. S.C.R. 411.]

IV. Infringement.

(§ IV—15)—JURISDICTION OF EXCHEQUER
COURT TO RESTRAIN.

The Exchequer Court of Canada has juris-

diction to restrain any infringement of a trade-mark, but has no jurisdiction to entertain an action seeking damages for passing off goods of the defendant as those manufactured and sold by the plaintiff. Trade-mark for gopher poison, registered in Canadian Trade-mark Register No. 79, folio 19,498, ordered to be expunged.

Mickelson Shapiro Co. v. Mickelson Drug & Chemical, 15 Can. Ex. 276.

(§ IV—16)—DISCONTINUANCE OF USE.

An intention to abandon as to Canada a trade-mark used by a foreign firm in a world-wide business is not to be inferred from a lapse of ten years between shipments made to Canada prior to an application in Canada to register the mark. [Mouson v. Boehm, 26 Ch.D. 398, referred to.]

Re Vulcan Trade-mark, 22 D.L.R. 214, 15 Can. Ex. 265.

[Affirmed in 24 D.L.R. 621, 51 Can. S.C.R. 411.]

(§ IV—18)—NAME OF EXPANSION BOLTS —
FIRM INITIALS—DISTINCTIVENESS.

The word "Cebcol" used as a trade-mark on expansion bolts representing the initials of the name of its company, while phonetically alike, is unconfusingly distinctive from the trade-mark "Sebco," packed in dissimilar cartons, and constitutes no infringement as ground for injunction.

Ogden Ltd. v. Can. Expansion Bolt Co., 22 D.L.R. 813, 33 O.L.R. 589, 8 O.W.N. 374.

V. Defences.

(See previous Annual Digests.)

VI. Registration.

(§ VI—30)—OWNERSHIP.

The applicant for registration in Canada of a trade-mark must be the proprietor of same. [Partlo v. Todd, 17 Can. S.C.R. 196, and Standard Ideal v. Standard Sanitary, 27 Times L.R. 63, referred to.]

Re Vulcan Trade-mark, 22 D.L.R. 214, 15 Can. Ex. 265.

[Affirmed in 24 D.L.R. 621, 51 Can. S.C.R. 411.]

(§ VI—30)—WHEN TITLE ACCRUES—RECTIFI-
CATION.

Registration of a trade-mark under the Trade-mark and Design Act, Can., confers no title to the mark, but is a pre-requisite to the right to bring an action under the Act; and rectification of a registered general trade-mark may be ordered by the Exchequer Court so as to exclude a conflicting specific mark in prior use by another firm and sought to be registered by the latter firm where the general mark was not applied by its owners to the line of goods covered by the specific mark until the dispute arose as to its use on such goods. [Auto Sales Gum v. Faultless Chemical Co., 14 D.L.R. 917, 14 Can. Exch. R. 302, and Re Noelle, 14 D.L.R. 385, 14 Can. Exch. R. 499, referred to.]

Re Vulcan Trade-mark, 22 D.L.R. 214, 15 Can. Ex. 265.

[Affirmed in 24 D.L.R. 621, 51 Can. S.C.R. 411.]

TRADE MOLESTATION.

See Strikes.

TRADE NAME.

See also Trade-mark.

Annotation.

Unfair competition; using another's trade-mark or trade-name; non-competitive lines of trade: 2 D.L.R. 380.

(§ I-9)—CUT RATE SHOE STORE—INFRINGEMENT—COMMON TERM.

A firm name of "Cut Rate Store," as applied to a retail shoe business, is a mere descriptive term of common use, which will not be enjoined by the Court against a person subsequently using that term to a similar business adjacently located.

Douglas v. Locke, 24 D.L.R. 238, 9 W.W.R. 42, 32 W.L.R. 254.

(§ I-9)—BAGGAGE TRANSFER COMPANY—RAILWAY COMPANY—PRIOR USE OF NAME—INTERIM INJUNCTION.

Grand Trunk R. Co. v. James, 22 D.L.R. 915, 31 W.L.R. 716.

TRADE UNIONS.

As to strikes, see Strikes.

TRANSFER OF ACTION.

For appeal, see Appeal, III.

For trial, see Venue; Removal of Causes; Courts.

TRANSPORTATION.

Governmental regulations, see Railways; Carriers; Shipping; Constitutional Law; Railway Commission.

TREASON.

(§ I-10)—ASSISTING ENEMY DURING WAR.

Assisting an enemy alien to leave Canada to join the enemy's forces is treason under Cr. Code sec. 74, sub-sec. (i); a mere attempt so to assist is not treason, but is indictable under Cr. Code secs. 72 and 570, where an intention to assist the enemy is manifested by any overt act. [By the Code Amendment, 1915, assisting alien enemies "to leave Canada" is made an offence if the circumstances do not exclude the possibility that assistance to the enemy is an intended object and if the assisting does not amount to treason. This is new, sec. 75A of the Code.]

Rex v. Snyder, 25 D.L.R. 1, 24 Can. Cr. Cas. 101, 34 O.L.R. 318, 8 O.W.N. 594.

(§ I-10)—ASSISTING PUBLIC ENEMY—TRAP EVIDENCE.

A conviction for an attempt to assist a public enemy with which His Majesty is at

war by agreeing to ferry four enemy aliens over the Niagara River to the United States, whence they might proceed to join the enemy's forces, is not sustainable where there was no incitement by the accused and the enemy aliens had no intention of leaving Canada and no knowledge that the purpose of their being brought to the accused was that they should be ferried across the river, the fact being that they were being used in the make-up of a police trap to get evidence against the accused because of a suspicion that he had committed similar offences; the aliens could not be said to have been "assisted" without a desire or willingness on their part to be assisted, and the sham plot having been terminated by the arrest of the accused after he took the consideration money paid in advance by another person who had solicited the accused in furtherance of the plot arranged by the authorities and the transportation not having begun, there was no evidence of an attempt. [R. v. Linneker, [1906] 2 K.B. 99, applied; R. v. Taylor, 1 F. & F. 511, referred to.]

Rex v. Snyder, 25 D.L.R. 1, 24 Can. Cr. Cas. 101, 34 O.L.R. 318, 8 O.W.N. 594.

TREES.

See Logs and Logging; Timber.

TRESPASS.

I. CIVIL.

- A. What constitutes.
- B. Who may maintain the action.
- C. Remedy; defences; recovery.

II. CRIMINAL.

By animals, see Animals; Railways.

Adverse possession by trespassers, see Adverse Possession.

Injury to trespassers, see Railways; Carriers; Street Railways; Negligence.

As to boundary, see Boundaries.

Annotations.

Obligation of owner or occupier of land to licensees and trespassers: 1 D.L.R. 240.

Unpatented land; Effect of priority of possessory acts under colour of title: 1 D.L.R. 28.

I. Civil.

A. WHAT CONSTITUTES.

(§ I A-5)—ESTATE OF PURCHASER CANCELLED BY RESCISSION—SUBSEQUENT OCCUPATION.

Where a purchaser has entered into possession of lands under a contract of sale and such contract is terminated by a final order of the Court cancelling the same and forfeiting the purchase money paid on account thereof pursuant to its terms, the estate at will of the purchaser is determined by the rescission of the contract, and he and his assigns will be liable in trespass for the subsequent occupation, and for removing the crop after the final order.

Stewart Bros. v. Schrader, 21 D.L.R. 764, 8 S.L.R. 172, 8 W.W.R. 761.

B. WHO MAY MAINTAIN THE ACTION.**(§ I B—10)—RIGHTS OF LANDLORD OR TENANT.**

A lessee in possession is the proper person to maintain an action for trespass, and the landlord has no right to maintain such action where the injury is of a temporary character, and there is no permanent injury to the property.

Crawford v. Clowes, 24 D.L.R. 214, 48 N.B.R. 199.

(§ I B—10)—TAKING GRAVEL FROM BEACH—ACTION BY POSSESSORY HOLDER—PARTITIONED CO-TENANCY.

A co-tenancy which had been divided by the co-tenants into their respective severalties, and held exclusively by one of them for a period sufficient to give him a possessory title under the Statute of Limitations (R.S.N.S., ch. 167, secs. 10, 14 and 15), will entitle the latter, or his successor in title, to maintain an action of trespass for the taking of gravel from the unfenced beach adjoining his lands.

McDougall v. McDougall, 23 D.L.R. 28, 49 N.S.R. 101.

C. REMEDY; DEFENCES; RECOVERY.**(§ I C—18)—RIGHT OF EQUITABLE OWNER.**

Under the Judicature Act (N.S.), recovery for trespass to land may be had upon an equitable title where there is an appropriate prayer for such relief.

Miller v. Halifax Power Co., 24 D.L.R. 29, 48 N.S.R. 370.

II. Criminal.

(See previous Annual Digests.)

TRIAL.**I. CONDUCT AND DISPOSAL.**

- A. In general.
- B. Election between counts.
- C. Reception of evidence.
- D. Statements and arguments of counsel.
- E. Withdrawal of juror.
- F. Objections and exceptions.
- G. Answering inquiry by jury; reading testimony to.
- H. Remarks of Court.

II. SUBMITTING CASE TO JURY.

- A. In general.
- B. Sufficiency of evidence to go to jury.
- C. Questions of law and fact.
- D. Taking case from jury.
- E. Special interrogatories.

III. INSTRUCTIONS.

- A. In general; form; time.
- B. Requests and answers generally.
- C. On what matters necessary or proper.
- D. On evidence and facts.
- E. Correctness of instruction.

IV. FINDINGS BY THE COURT.**V. VERDICT OR FINDINGS OF JURY.**

- A. In general.
- B. Retirement; conduct of jury; coercion; poll.
- C. Sufficiency and correctness.
- D. Amendment or correction.
- E. Remittitur; Setting aside.

VI. NOTICE OF TRIAL; PRELIMINARY PROCEEDINGS; EXPEDITING.**VII. PRELIMINARY ISSUE OF FACT.****VIII. TRIAL OF SEVERAL ACTIONS; DIFFERENT PLAINTIFFS; COMMON DEFENDANT.****IX. PRELIMINARY LAW QUESTIONS.****X. PUBLICITY.**

Postponement of, see Continuance and Adjournment; Stay of Proceedings.

Right to trial by jury, see Jury.

Grounds for new trial, see New Trial.

Place of trial, see Venue; Removal of Causes; Courts.

Annotations.

Preliminary questions; actions for malicious prosecution: 14 D.L.R. 817.

Publicity of the Courts; hearing in camera: 16 D.L.R. 769.

I. Conduct and disposal.**A. IN GENERAL.****(§ I A—2)—SUMMARY CONVICTIONS—TRYING SEVERAL CHARGES AT ONE TIME.**

Where the assaults charged separately against two persons took place as part of one and the same occurrence, and the evidence would have been identical in each case, it is not a ground for quashing the summary conviction in either case that the two cases were tried together, particularly where no exception was taken at the trial. [R. v. Lapointe, 4 D.L.R. 210, 20 Can. Cr. Cas. 98, and R. v. Fry, 19 Cox C.C. 135, 62 J.P. 457, applied.]

Rex v. Tally, 21 D.L.R. 651, 23 Can. Cr. Cas. 449, 8 A.L.R. 453, 7 W.W.R. 1178, 30 W.L.R. 396.

B. ELECTION BETWEEN COUNTS.**(§ I B—7)—SEVERAL COUNTS—SEPARATE TRIAL.**

Where evidence is tendered in support of one count of an indictment which while admissible thereon is not admissible in proof of another count of the same indictment, the defendant's remedy is to apply under Cr. Code, sec. 857, to have each count tried separately, if he fears that, notwithstanding the direction which would properly be given by the Judge to the jury to disregard such evidence in considering the second count, the jury would unconsciously be influenced thereby to the prejudice of the accused.

Rex v. Strong, 24 Can. Cr. Cas. 430.

C. RECEPTION OF EVIDENCE.

C-107.—CROWN WITNESSES AT PRELIMINARY INQUIRY.

If the Crown does not intend to call at the trial a witness whom it called on the preliminary inquiry, such witness should be made available to the defence unless his evidence is unquestionably immaterial. (Dictum by the Court.)

Rex v. McClain, 23 D.L.R. 312, 23 Can. Cr. Cas. 488, 8 A.L.R. 73, 7 W.W.R. 1134, 30 W.L.R. 388.

D. STATEMENTS AND ARGUMENTS OF COUNSEL.

§ I D—15)—INFLAMMATORY LANGUAGE.

The mischievous practice of employing inflammatory language in addressing juries is an abuse of privilege of counsel, and if persisted in a contempt of court.

Dale v. Toronto R. Co., 24 D.L.R. 413, 34 O.L.R. 104, 8 O.W.N. 443.

§ I D—21)—COMMENTING ON DEFENDANT'S FAILURE TO TESTIFY.

Where there is a clear contravention of sec. 4 of the Canada Evidence Act by a comment by the prosecuting counsel in his address to the jury on defendant's failure to take the witness stand in his own behalf, the jury may be discharged and the sheriff directed to summon a new jury for the re-trial of the indictment.

Rex v. Beaulieu, 24 Can. Cr. Cas. 65.

G. ANSWERING INQUIRY BY JURY; READING TESTIMONY TO.

§ I G—35)—CRIMINAL CASE—MESSAGE TO JUDGE FROM JURY ROOM.

Where the jury are deliberating in a criminal case and the trial Judge has taken up the trial of another case, the fact that the foreman of the jury sent a note to the Judge asking for a certain letter which had been mentioned in the evidence, but which had not been filed as an exhibit, and that the Judge directed the clerk of assize to inform the foreman that the letter itself was not in possession of the Court, is not a ground of objection against the verdict. [Wilmont's Case, 10 Cr. App. R. 173, distinguished.]

Rex v. Batterman, 24 Can. Cr. Cas. 351, 34 O.L.R. 225, 8 O.W.N. 554.

H. REMARKS OF COURT.

§ I H—39)—COMMENT ON FAILURE OF ACCUSED TO REBUT TESTIMONY.

A direction to the jury on a criminal trial that the accused had failed to account for a particular occurrence, as to which, by reason of the testimony adduced against him, the onus was cast upon him to answer, is not a comment upon the failure of the accused to testify, and does not contravene sec. 4 of the Canada Evidence Act, R.S.C. 1906, ch. 145. [R. v. Aho, 8 Can. Cr. Cas. 453, 11 B.C.R. 114, applied.]

Rex v. May, 21 D.L.R. 728, 23 Can. Cr.

Cas. 469, 21 B.C.R. 23, 7 W.W.R. 1261, 30 W.L.R. 488.

II. Submitting case to jury.

B. SUFFICIENCY OF EVIDENCE TO GO TO JURY.

§ II B—45)—NEGLECTANCE.

Under the Quebec practice it is sufficient to put to the jury the question whether there was negligence and in what it consisted, and it is not necessary to detail specific faults.

Temple v. Montreal Tramways, 23 D.L.R. 587, 47 Que. S.C. 121.

C. QUESTIONS OF LAW AND FACT.

§ II C 1—55)—MIXED QUESTIONS OF LAW AND FACT.

In a jury trial mixed question of law and of facts is for the jury under the direction of the presiding Judge on the law part.

Security Life Ins. Co. v. Power, 24 Que. K.B. 181.

§ II C 5—91a)—MALICIOUS PROSECUTION—PROBABLE CAUSE.

The question of reasonable and probable cause is one of law for the Court, but in order to decide that question the Court may properly ask the jury to decide the fact whether the defendant made reasonably careful inquiry. [Abrath v. North East R. Co., 11 A.C. 247, followed.]

Rudyk v. Shandro, 24 D.L.R. 330, 9 A.L.R. 87, 8 W.W.R. 880, affirming 18 D.L.R. 641.

§ II C 8—110)—NEGLECTANCE.

The question of negligence is a mixed question of law and fact; it is for the Judge to explain the law to the jury, from which they may draw their conclusion as to the question of liability, which will be binding upon the Court. [Montreal Light v. Regan, 40 Can. S.C.R. 580, 590; Tobin v. Murison, 5 Moore P.C. 110, followed.]

City of Montreal v. Gamache, 25 D.L.R. 303, 24 Que. K.B. 312.

§ II C 8—130)—NEGLIGENT DRIVING—SPEED.

In an action for damages for an injury to the plaintiff caused by the defendant's servant in the course of his employment negligently and through want of proper care and skill in driving a horse and carriage running into and injuring the plaintiff, a witness for the plaintiff having stated that just before the accident happened the horse was trotting, was asked, "Could you say how many miles an hour?" answered (subject to objection), "The horse was going so fast that I don't think he could have been pulled up immediately"—Held, that the answer was properly received. It is the duty of the trial Judge to determine whether any facts have been established from which negligence may be reasonably inferred, and for the jury to find whether from the facts so established negligence ought to be inferred.

Porter v. O'Connell, 43 N.B.R. 458.

(§ II C 8—148) — **VOLENS — CONTRIBUTORY NEGLIGENCE.**

The question as to whether an engineer employed by a railway company received his injuries through his own negligence or whether he voluntarily assumed the risk is one of fact for the jury. [McPhee v. Esquimalt, etc., R. Co., 16 D.L.R. 756, 49 Can. S.C.R. 43; Canada Foundry Co. v. Mitchell, 35 Can. S.C.R. 452, followed.]

McPhee v. Esquimalt & Nanaimo R. Co., 23 D.L.R. 561, 8 W.W.R. 1319, 32 W.L.R. 125.

D. TAKING CASE FROM JURY.

(§ II D 1—170)—**VOLENS.**

In the case of volens a very slight amount of evidence will prevent the Court from withdrawing the question from the jury. [Creveling v. Can. Bridge Co., 21 D.L.R. 662; McPhee v. Esquimalt, etc., R. Co., 16 D.L.R. 756, 49 Can. S.C.R. 43, 48, referred to.]

McPhee v. Esquimalt & Nanaimo R. Co., 23 D.L.R. 561, 8 W.W.R. 1319, 32 W.L.R. 125.

(§ II D 1—170)—**EVIDENCE OF NEGLIGENCE—PRESUMPTIONS.**

In a trial before a jury for damages resulting from an accident, the presiding Judge would not be justified to withdraw the case from the jury when there is some proof of negligence against the defendant, even if that evidence is only made up of presumptions.

Irwin v. G.T.R. Co., 47 Que. S.C. 32.

III. Instructions.

D. ON EVIDENCE AND FACTS.

(§ III D—228)—**COMMENT ON FAILURE OF PRISONER'S WIFE TO TESTIFY FOR DEFENCE—NEW TRIAL.**

It is a ground for granting a new trial on a conviction for murder that the trial Judge commented on the failure of the prisoner's wife to testify for the defence, although the Judge before verdict withdrew the comment. [R. v. Corby, 1 Can. Cr. Cas. 457; R. v. Coleman, 2 Can. Cr. Cas. 523; R. v. Hill, 7 Can. Cr. Cas. 38, 33 N.S.R. 253, followed.]

The King v. Romano, 21 D.L.R. 195, 24 Can. Cr. Cas. 30, 24 Que. K.B. 40.

E. CORRECTNESS OF INSTRUCTION.

(§ III E 2—235)—**PRESIDING JUDGE SUMMING UP—COMMENT.**

In his charge to the jury, the presiding Judge at the trial has the right to sum up the evidence and comment upon the facts and connect them with the proper principles of law.

Temple v. Montreal Tramways Co., 23 D.L.R. 587, 47 Que. S.C. 121.

(§ III E 4—250)—**AS TO WHAT CONSTITUTES NEGLIGENCE.**

In an action for damages for an injury

caused by alleged negligence, the verdict will not be set aside on the ground that the trial Judge failed to instruct the jury as to what would, and what would not, constitute negligence, if counsel on the trial neglected to ask the Judge to so instruct them.

Robinson v. Haley, 42 N.B.R. 657.

(§ III E 4—250)—**CAUSE OF ACCIDENTS—EXHIBITS.**

When a jury renders a verdict of specific and positive fault against the defendant, the latter cannot, before the Court of Review, object to a part of the Judge's charge to the effect that the accident having taken place by the bursting of an engine, the property and the keeping in good order of it appertaining to the defendants, the jury could come to a conclusion against them without finding fault against them if the defendants did not shew that it was impossible for them to avoid the accident; as the verdict was not given under art. 1054, but under art. 1053 C.C. It belongs to the jury, and not to the Judge, to draw conclusions from the fact that exhibits which could have helped the jury were not produced before them.

Irwin v. G.T.R. Co., 47 Que. S.C. 32.

(§ III E 4—253)—**COLLISION—PRESUMPTION OF NEGLIGENCE.**

It is sound law for a Judge to instruct a jury that allowing two cars owned by the same company to collide is a presumption of negligence or fault equivalent to proof, and they could so find if the company does not shew that it is in no way responsible.

Kazaransky v. Montreal Tramways Co., 48 Que. S.C. 76.

(§ III E 5—260)—**INSTRUCTION TO JURY IN CRIMINAL CASE—COMMENT ON FAILURE OF ACCUSED TO TESTIFY.**

Upon an appeal to the Court of Appeal or an application for a new trial following a conviction, it is not permissible for the accused to read affidavits for the purpose of shewing that the Judge who presided at the trial had, in his charge to the jury, made comments upon the failure of the accused to testify and so contravened the provision of sec. 4 of the Canada Evidence Act, R.S.C. 1906, ch. 145, where the trial Judge has transmitted to the Court of Appeal a report containing his charge to the jury; the Court of Appeal is in such case bound to accept such report as complete, and has no power to order the taking of evidence or to receive evidence for the purpose of shewing the inaccuracy or incompleteness of such report. [See R. v. Angelo, 22 Can. Cr. Cas. 304, 16 D.L.R. 126, 19 B.C.R. 261.]

Di Lena v. The King, 24 Can. Cr. Cas. 301, 24 Que. K.B. 262.

(§ III E 5—260) — **HOMICIDE — MANUFACTURED EVIDENCE.**

On the trial of a murder charge, the construction of a letter written by the accused and placed in evidence is for the Judge and not for the jury, and where the letter itself

is a request to make false statements in aid of his defence, the trial Judge may tell the jury that they should take into consideration the prisoner's action in endeavouring to manufacture evidence to mislead the Court by concocting the scheme as disclosed in his letter, to account for the money found on him.

Rex v. Haynes, 22 D.L.R. 227.

(§ III E 5—261)—INACCURACY IN JUDGE'S CHARGE—PREJUDICE.

A slight inaccuracy in the Judge's charge to the jury in referring to certain evidence as having been given at the preliminary inquiry whereas it was in fact given at the trial itself, and the depositions at the preliminary inquiry, were not then put in as evidence, but the preliminary inquiry was referred to in the testimony, will not constitute a ground for setting aside a conviction, where the inaccuracy could not have prejudicially affected the prisoner.

Rex v. Haynes, 22 D.L.R. 227.

(§ III E 5—261)—MURDER—EVIDENCE DISCLOSING MANSLAUGHTER—DUTY TO INSTRUCT.

When evidence at a trial for murder shows that the jury may reasonably infer a case of manslaughter, the Judge should direct the jury upon that point.

Rex v. Jagat Singh, 9 W.W.R. 514, 32 W.L.R. 637, 25 Can. Cr. Cas.

IV. Findings by the Court.

(See previous Annual Digests.)

V. Verdict or finding of jury.

A. IN GENERAL.

(§ V A—270)—FORM—EFFECT GIVEN TO FINDINGS.

There is no sacramental form in which the jury may make known its decision on any question, and some intelligent effect must be given by the Court to the findings of jurors who are not skilled in legal phraseology.

Temple v. Montreal Tramways Co., 23 D.L.R. 587, 47 Que. S.C. 121.

(§ V A—270)—DISCRETION AS TO CREDIBILITY OF TESTIMONY.

The right of a jury to interpret the evidence is the same as that of the Judge, and it may consider that the want of credibility in a part of the testimony of a witness throws doubt upon the whole remainder of his testimony.

Grand Trunk R. Co. v. Brassard, 47 Que. S.C. 369.

C. SUFFICIENCY AND CORRECTNESS.

(§ V C 1—285)—COMMON FAULT—NON-APPORTIONMENT OF DAMAGES—NEW TRIAL.

The verdict of a jury in an action for damages brought by a widow and her children under art. 1056 C.C., which awards a lump sum of \$3,000, without fixing the por-

tion which should go to the wife and which to each of the children, is illegal, and a new trial will be ordered. The same is the case when a verdict admits common fault and does not establish the proportion of fault for each of the parties.

Monette v. Township of Wright, 48 Que. S.C. 294.

(§ V C 1—288)—NEGLIGENCE—INCONSISTENCY OF FINDINGS.

Where the actions of a jury plainly imports that they have treated the defendants in a negligence case as "insurers" of the safety of pedestrians, and award damages to the plaintiff after having failed to agree that the defendants were guilty of negligence, the defendants are entitled to judgment. (Per McPhillips, J.A.)

Mackenzie v. B.C. Electric Co., 8 W.W.R. 956.

E. REMITTITUR; SETTING ASIDE.

(§ V E—300)—WHEN REFUSED—ISSUES SUPPORTED BY EVIDENCE.

Where the trial Judge during the trial of an action, in his directions to the jury, presents the issues fully to them, and where the evidence supports it, the verdict of the jury should not be disturbed.

Creveling v. Canadian Bridge Co., 21 D.L.R. 662, 51 Can. S.C.R. 216, 8 W.W.R. 619, reversing 20 D.L.R. 528, 20 B.C.R. 137.

(§ V E—300)—DEFECTIVE NOTICE NO GROUND FOR SETTING ASIDE.

Where a defective notice has been given under a law compelling a notice of injury (with a full detailed statement of such damages) to be given within a certain period before commencement of action, a defendant may, by preliminary exceptions, delay the trial until proper notice has been given, but, after the action has been tried on its merits, such defective notice will not be a ground for setting aside the verdict where no prejudice has been proven.

Temple v. Montreal Tramways Co., 23 D.L.R. 587, 47 Que. S.C. 121.

(§ V E—300)—ADMISSION OF CUMULATIVE EVIDENCE.

If evidence is admitted by way of rebuttal which is cumulative and not properly rebuttal testimony, despite the objection of the opposing counsel, he having an opportunity to produce further evidence to meet the evidence so admitted, such evidence should be accepted as part of the case upon which to decide a motion to set aside the verdict.

Robinson v. Haley, 42 N.B.R. 657.

(§ V E—300)—EXCESSIVE DAMAGES.

Application to set aside a verdict on the grounds of excessive damages, dismissed as the damages were not manifestly so unreasonable that no body of twelve men could have honestly given such a sum, and it had not been shewn that, in arriving at the amount, the jury took into consideration something which they ought not to

have taken or failed to take into consideration something which they ought to have taken, and this even though the amount of the damages awarded indicated that the jury did not properly appreciate the considerations on which they had to assess these damages.

Jackson v. C.P.R. Co., 9 W.W.R. 649, affirming 24 D.L.R. 380, 8 W.W.R. 1043, 31 W.L.R. 726.

VI. Notice of trial; preliminary proceedings; expediting.

(§ VI—320)—COMPUTATION OF TIME—TRANSFER OF ACTION.

Where the time for setting down for trial and the giving notice of trial has begun to run prior to the action being transferred from a District Court (Sask.) to the Supreme Court, such time will count as part of the time within which the action will have to be set down for trial in the Supreme Court of Saskatchewan.

Boll v. Montgomery, 23 D.L.R. 319.

(§ VI—320)—NOTICE OF TRIAL—JURY SITTINGS—NON-JURY SITTINGS—RULE 246—PRACTICE.

Bethune v. Biggar, 9 O.W.N. 116.

VII. Preliminary issue of fact.

VIII. Trial of several actions; different plaintiffs; common defendant.

(See previous Annual Digests.)

IX. Preliminary law questions.

(§ IX—350)—PRELIMINARY TRIAL OF ISSUE OF LAW—REFUSAL OF ORDER FOR CONVENIENCE—EXPENSE—DELAY.

Anderson v. Canada Furniture Manuf., 9 O.W.N. 32.

(§ IX—350)—STATED CASE—PRELIMINARY QUESTION OF LAW—CONTRACT—STATUTE OF FRAUDS—REFUSAL TO ENTERTAIN CASE—DETERMINATION OF CASE NOT DECISIVE OF ACTION—RULE 126—JUDICATURE ACT, SEC. 32 (2).

Constable v. Russell, 7 O.W.N. 746.

X. Publicity.

(See previous Annual Digests.)

TROLLEY.

See Street Railways.

Injury to conductor while adjusting, see Master and Servant.

TROVER.

I. RIGHT OF ACTION.

- A. In general.
- B. Conversion; what constitutes.
- C. Demand; tender.

II. LIABILITY; DEFENCES; EFFECT OF SUIT OR RECOVERY.

I. Right of action.

A. IN GENERAL.

(§ I A—4)—POSSESSORY RIGHTS—ACTION BY DISSEISEE.

A person possessed of goods as his property has a good title as against every stranger and that one who takes them from him having no title in himself, is a wrongdoer and cannot defend himself by shewing that there was title in some third person, for as against a wrong doer possession is title. [Jeffries v. G.W.R. Co., 5 El. & Bl. 802; The Winkfield, [1902] P. 42; Glenwood Lumber Co. v. Phillips, [1904] A.C. 405, referred to.]

Dutton v. C.N.R. Co., 23 D.L.R. 43, 31 W.L.R. 367, 19 Can. Ry. Cas. 72.

B. CONVERSION; WHAT CONSTITUTES.

(§ I B 1—10)—WRONGFUL SEIZURE—IDENTIFY HORSES SEIZED.

Follis v. Baird, 31 W.L.R. 536.

II. Liability; defences; effect of suit or recovery.

(See previous Annual Digests.)

TRUST DEED.

For benefit of creditors, see Assignment for Creditors.

As to deeds of settlement and of trust generally, see Trusts.

Registration of, see Records and Registry Laws.

TRUSTS.

I. CREATION; VALIDITY; TERMINATION.

- A. In general.
- B. Express or declared trusts; precatory trusts.
- C. Parol trust; Statute of Frauds.
- D. Implied, constructive and resulting trusts.
- E. Revocation.
- F. Termination; release; discharge.

II. TRUSTEES.

- A. Appointment; capacity; resignation; removal; number.
- B. Rights, powers, duties and liabilities.
- C. Suit for instructions.

III. INTEREST OF CESTUI QUE TRUST; RIGHTS OF CREDITORS; SPENDTHRIFT TRUST.

- A. In general.
- B. Rights of creditors; spendthrift trusts.

IV. LIABILITY OF TRUST ESTATE GENERALLY.

V. RIGHTS AND LIABILITIES OF TRANSFEREES; FOLLOWING TRUST PROPERTY.

VI. TRUST CERTIFICATES.

Registration of, see Records and Registry Laws.

Trustees named in wills, see Executors and Administrators.

Annotation.

Appointment of trustees and receivers in charge of enemy companies and firms during war: 23 D.L.R. 375, 379.

I. Creation; validity; termination.**A. In general.****(§ I A—1) — MORTGAGE — RELATIONSHIP — MORTGAGEE TRUSTEE FOR SURPLUS.**

During the continuance of a mortgage there is not a relationship of trustee and cestui que trust between the mortgagor and the mortgagee; but after the exercise of a power of sale the mortgagee is a trustee of the surplus in his hands. [Re Kingsland, 7 P.R. (Ont.) 460, approved; Western Canada v. Court, 25 Gr. 151, disapproved; London and County Banking Co. v. Goddard, [1897] 1 Ch. 642, followed.]

Re Worthington, 21 D.L.R. 402, 33 O.L.R. 191, 7 O.W.N. 837.

(§ I A—1)—DECLARATION WITH REGARD TO LAND — NOTICE — ACCOUNT—WINDING-UP—REFERENCE—COSTS.

Loveland v. Sale, 8 O.W.N. 576.

B. EXPRESS OR DECLARED TRUSTS; PRECATORY TRUSTS.**(§ I B—6)—CONTRACT TO DEVISE — PRESENT DECLARATION OF TRUST.**

A contract to devise a beneficial interest assumes an estate in the person who contracts to enable the contract to be performed, and not a promise to settle as a present declaration of trust.

Central Trust and Safe Deposit Co. v. Snider, 25 D.L.R. 410, [1916] A.C. 266, reversing Snider v. Carlton, 6 O.W.N. 337.

(§ I B—6)—TRUST AGREEMENT—DIRECTION TO CONVERT SUBJECT OF TRUST INTO MONEY — COMPANY-SHARES — FAILURE OF BENEFICIARIES TO AGREE UPON ALLOTMENT IN SPECIE—DIRECTION TO SELL—REFERENCE—SALE EN BLOC OR IN PARCELS — DISCRETION OF MASTER.

Rose v. Rose, 9 O.W.N. 189.

C. PAROL TRUST; STATUTE OF FRAUDS.**(§ I C—15)—HOW ESTABLISHED.**

The Statute of Frauds does not prevent the establishment of a trust by parol evidence. [Rochefoucauld v. Boustead, [1897] 1 Ch. D. 196, applied; Shepard v. Bruner, 19 D.L.R. 869, reversed.]

Shepard v. Bruner, 24 D.L.R. 40, 31 W.L.R. 721.

D. IMPLIED, CONSTRUCTIVE AND RESULTING TRUSTS.**(§ I D—21) — SUBSCRIPTION AGREEMENT — PRESUMPTION.**

On a share subscription agreement with a firm of stockbrokers described as trustees but without further disclosure of the trust whereby certain others called the sub-

scribers severally purchased the number of shares to which each had subscribed in a company subject to the N.S. Companies Act, it is not to be presumed that the stockbrokers are acting in trust for the company itself if the agreement is consistent with its being made in trust for themselves and associate underwriters, where the subscription below par would be subject to attack if the same were an original allotment.

Borden v. Stanford, 21 D.L.R. 209, 48 N.S.R. 532.

(§ I D—22)—SHARE OF PROCEEDS OF SALE OF FARM — ACCOUNT — CONTRACT—COUNTERCLAIM—FRAUD AND MISREPRESENTATION—COSTS.

Davison v. Forbes, 9 O.W.N. 22, 145, 319.

(§ I D—24) — RESULTING TRUSTS — HOW ARISING.

A resulting trust is one in which the person in whose favour the trust arises is the person who provided the property or equitable interest vested in the person bound by the trust.

Baird v. Columbia Trust Co.; Columbia Trust Co. v. Baird, 22 D.L.R. 150.

(§ I D—24) — FAILURE OF CONSIDERATION — REMEDIES.

If property be conveyed in consideration of a covenant to pay money, the breach of the covenant to pay does not bring about a failure of consideration; the consideration is the covenant, and a failure to observe it results in a right of action at law on the covenant for its breach, and not in any equitable right based on failure of consideration.

Central Trust and Safe Deposit Co. v. Snider, 25 D.L.R. 410, [1916] A.C. 266, reversing Snider v. Carlton, 6 O.W.N. 337.

(§ I D—24)—CONVEYANCE FOUNDED ON PROMISE TO SETTLE LANDS—RIGHT TO SPECIFIC PERFORMANCE.

An absolute conveyance of land for a nominal consideration and principally founded on the grantee's promise to pay half the income thereof less disbursement during the grantor's life and thereafter to settle the property itself to the latter's heirs, merely gives right to have the promise specifically performed, but does not create a trust in presenti, as respecting the land, in the grantor's favour, nor a resulting trust in the event of a failure to carry out the promise. [Fremoult v. Dedire, 1 P.W. 429, considered; Howard v. Miller, 22 D.L.R. 75, [1915] A.C. 318; Synge v. Synge, [1894] 1 Q.B. 466, applied.]

Central Trust and Safe Deposit Co. v. Snider, 25 D.L.R. 410, [1916] A.C. 266, reversing Snider v. Carlton, 6 O.W.N. 337.

II. Trustees.**A. APPOINTMENT; CAPACITY; RESIGNATION; REMOVAL; NUMBER.****(§ II A—43)—PURCHASING STOCK ON OWN ACCOUNT—WHEN GROUND FOR REMOVAL.**

A trustee is prevented not only from doing

things which bring an actual loss upon the estate, but from doing anything which has a tendency to interfere with his duty and to injure the trust; the fact that the trustee purchased a block of stock on his own account, and with his own money from a company controlled by the estate, in which the trustee was also a beneficiary, does not entitle the cestui que trust to a declaration by the Court that he is a trustee for them of the shares so bought subject to a lien in his favour for the price paid; but if it be shewn that his interest and his duty conflict because of such purchase, that would be a ground for removing him from his office as trustee. (*Hamilton v. Wright*, 9 Cl. & F. 111; *Bennett v. Gaslight, etc., Co.*, 48 L.T.R. 156; *Moore v. McGlynn*, [1894] 1 I.R. 74; and *Re Marshall*, [1914] 1 Ch. 192, referred to.)

Rose v. Rose, 22 D.L.R. 572, 32 O.L.R. 481, 7 O.W.N. 416.

B. RIGHTS, POWERS, DUTIES AND LIABILITIES.

(§ II B—45)—TRUST COMPANY—SEPARATE TRUSTS—CONSOLIDATION—ADVANCES BY TRUST COMPANY IN RESPECT OF ONE TRUST—BALANCES DUE BY TRUST COMPANY IN RESPECT OF OTHER TRUSTS—SET-OFF—INSOLVENCY OF TRUST COMPANY—RIGHTS OF LIQUIDATOR—BENEFICIARIES.

Re Beck Trusts, 9 O.W.N. 48.

(§ II B—49)—INVESTMENTS SPECIFIED IN WILL—POWER OF TRUSTEE TO INVEST IN STATUTORY SECURITIES UNLESS EXPRESSLY FORBIDDEN.

Re McCormick, 25 D.L.R. 735, 9 W.W.R. 499.

(§ II B—52)—RIGHT TO LAND PURCHASED WITH TRUST FUNDS—MORTGAGE TO CESTUI QUE TRUST.

Real estate purchased by a trustee with funds held in trust, but with knowledge of the cestui que trust and secured by a mortgage in the latter's favour in a sum exceeding the purchase price, does not entitle the cestui que trust to a declaration of title to the land in his favour.

Beamish v. Lawlor, 23 D.L.R. 141.

(§ II B—57)—RIGHT TO COMPENSATION.

Sec. 49 of the Trustee Act, R.S.M. 1913, ch. 200, does not give a trustee a statutory right to remuneration where his trusteeship is created for his own purposes and to protect his financial interest without any express provision for remuneration, and where the trustee assuming the trust under such circumstances had orally agreed with the other parties that he was not to be paid any remuneration, his petition under the Act for an allowance in that respect is properly refused.

Dart v. Drury, 23 D.L.R. 399, 25 Man. L.R. 258, 8 W.W.R. 173, 30 W.L.R. 809.

(§ II B—57)—TRUSTEES NAMED IN WILL—LEGACY IN LIEU OF COMPENSATION.

Re Lendrum, 24 D.L.R. 885, 9 W.W.R. 245, 32 W.L.R. 556.

III. Interest of cestui que trust; rights of creditors; spendthrift trust.

A. IN GENERAL.

(§ III A—60)—TRUSTEES—EXECUTORS—OVER-PAYMENT TO BENEFICIARIES—TRUSTEES OF INSURANCE FUND—MONEYS DUE TO SAME BENEFICIARIES—SET-OFF—DIFFERENT PARTIES—INSOLVENCY OF TRUST COMPANY—RIGHTS OF LIQUIDATOR.
Re Beck Trusts, 9 O.W.N. 283.

B. RIGHTS OF CREDITORS.

(§ III B—65)—PERSONAL CONTRACT OF TRUSTEE—LIABILITY OF PARTIES—PRIVITY.

Held, per *McLeod, C.J.*, and *Grimmer, J.*, that the defendant *Matthew Burgess*, in making the contract, was acting as the agent of all the parties to the indenture, and those parties were all liable for the damages resulting from the breach; that the verdict against the defendant *Matthew Burgess*, and the verdict in favour of the defendant *James Burgess*, should be set aside, and a verdict entered against both the defendants. Per *Barry, J.*: that the contract was the personal contract of *Matthew Burgess* as trustee of *James Burgess & Sons*, and no privity between the plaintiffs and *James Burgess* and no relation representative, contractual or fiduciary between the defendants was shewn to exist, and the defendant *James Burgess* was improperly made a party to the action.

Jones v. Burgess, 43 N.B.R. 126.

[Varied by *Canada Supreme Court*, March 3, 1916.]

IV. Liability of trust estate generally.

(See previous Annual Digests.)

ULTRA VIRES.

Ultra vires acts of corporations, see Corporations and Companies.

As to statutes, see Constitutional Law.

UNDUE INFLUENCE.

See also Duress.

As affecting validity of instruments, see Wills; Deeds; Contracts; Bills and Notes; Mortgage.

Transactions between husband and wife, see Husband and Wife.

UNFAIR COMPETITION.

See Monopoly and Combination.

As affecting validity of contracts, see Contracts III.

UNLAWFUL COMBINATIONS.

See Monopoly and Combinations.

USURY.

I. IN GENERAL; WHAT CONSTITUTES.

A. In general.

- B. In loans by agent or broker.
- C. Bank transactions.

II. EFFECT; REMEDIES.

Interest in general, see Interest.
Relief against in mortgages, see Mortgage.

- I. In general; what constitutes.
(See previous Annual Digests.)

II. Effect; remedies.

(§ II—25)—REMEDIES UNDER MONEY LENDERS' ACT—RECOVERING EXCESS.

Under the Money Lenders' Act (R.S.C. 1906, ch. 122, sec. 7), the Court can modify the terms and conditions of a loan of money at usurious interest under form of bonus only, in the case where it is alleged in the defence that the amount of interest paid or claimed exceeds the rate of 12 per cent. per annum, though the demand for reduction of usurious interest made for the first time at the hearing be favoured, the Court cannot exceed its powers when this allegation is not present. The borrower can always recover this excess of interest under the provisions of the above mentioned Act.

Vanaase v. Robillard, 47 Que. S.C. 487.

VACCINATION.

School regulation as to, see Schools.

VENDOR AND PURCHASER.

I. RIGHTS AND LIABILITIES OF PARTIES.

- A. In general.
- B. Payment of purchase money; deductions.
- C. Defective or unmarketable title.
- D. Deficiency in quantity.
- E. Rescission of contract.

II. VENDORS' LIEN; FORECLOSURE.

III. RIGHTS OF PARTIES AS TO THIRD PERSONS; BONA FIDE PURCHASERS.

Construction of contract for transfer of land, see Contracts II.

Damages for refusal to perform agreement, see Damages.

As to what constitutes fraud, see Fraud and Deceit.

Purchase money mortgages, assumption of mortgage debt, see Mortgage.

Pleading implied covenant, see Pleadings.
Specific performance of contracts, see Specific Performance.

As to rescission generally, see Contracts V.

Registration of instruments, priorities, see Land Titles; Records and Registry Laws.

Annotations.

Contracts; Part performance; Statute of Frauds: 17 D.L.R. 534.

Equitable rights on sale subject to mortgage: 14 D.L.R. 652.

Payment of purchase money; purchaser's right to return of, on vendor's inability to give title: 14 D.L.R. 351.

Sale of land; Rescission for want of title in vendor: 3 D.L.R. 795.

When remedy of specific performance applies: 1 D.L.R. 354.

Right of rescission for misrepresentation, and waiver of: 21 D.L.R. 329.

Foreclosure actions affected by Mortatorium: 22 D.L.R. 865.

Assumption of mortgage debt upon transfer of mortgaged premises: 25 D.L.R. 435.

I. Rights and liabilities of parties.

A. IN GENERAL.

(§ I A—1)—DUTY TO FURNISH ABSTRACT OF TITLE.

It is necessary for a vendor to furnish an abstract of title only if the purchaser demands it.

Boydell v. Haines, 21 D.L.R. 371, 21 B.C.R. 171, 8 W.W.R. 17, 30 W.L.R. 842.

(§ I A—1)—SPECIFIC PERFORMANCE OF CONTRACT.

* The trusteeship resulting from a contract for sale of lands under the rule that the vendor is as to his interest in the lands a trustee for the purchaser subject to a lien for the purchase money, is limited to cases in which a Court of equity would grant specific performance.

Howard v. Miller, 22 D.L.R. 75, [1915] A.C. 318, 112 L.T. 403, 20 B.C.R. 227 at 230, reversing Miller v. Howard, 4 W.W.R. 1193.

[Applied in Central Trusts v. Snider, 25 D.L.R. 410.]

(§ I A—1)—PURCHASER'S RIGHT TO DAMAGES—DELAY.

Damages can be recovered by a purchaser from his vendor, unless the contract provides to the contrary, for delay in completing the purchase where the delay has been occasioned by default of the vendor, not in consequence of want of or defect in title or in consequence of conveyancing difficulties but by reason of the vendor not having used reasonable diligence to perform his contract. [Jones v. Gardiner, [1902] 1 Ch. 191; Jaques v. Millar, 6 Ch.D. 153, applied.]

Lobel v. Williams, 22 D.L.R. 127, 25 Man. L.R. 161, 7 W.W.R. 1042, 30 W.L.R. 352.

(§ I A—1)—PURCHASER TAKING POSSESSION—LIABILITY FOR TAXES—SALE OR LEASE.

A purchaser under an agreement for sale by instalments, who is entitled to and does go into possession, is bound to pay the taxes and other outgoings in respect of the land. Held, also that the document in question operated as an agreement for sale and not a lease.

Carman gay v. Snyder, 8 W.W.R. 567.

(§ I A—3b)—**ILLEGAL SALE OF SUBDIVISION LOTS — NON-REGISTRATION OF PLAN — VENDEE'S LIEN.**

A sale of lots according to a plan purporting to be a subdivision plan, which is not registered at the time of the sale, is illegal under a statute forbidding the sale of lots before the registration of the plan, although the agreement covers the whole block and is not a sale of any particular lot, and the purchaser may recover the purchase price paid thereon and is entitled to a lien on the land until same is paid. [Veilleux v. Boulevard Heights, 20 D.L.R. 558, affirmed in 24 D.L.R. 881, 52 Can. S.C.R. 185, 26 D.L.R.; Abbott v. Ridgeway, 8 A.L.R. 315, followed.]

Sheppard v. Godfrey, 24 D.L.R. 646, 9 W.W.R. 345, 32 W.L.R. 730, affirming 31 W.L.R. 617, 8 W.W.R. 999.

(§ I A—3b)—**AGREEMENT FOR SALE OF LAND TO RAILWAY COMPANY — UNDIVIDED SHARES IN PORTION OF LAND OWNED BY CHILDREN OF VENDOR—REFUSAL OF CHILDREN TO CONVEY — PAYMENT OF PURCHASE-MONEY TO SOLICITORS FOR VENDOR—LIEN OF PURCHASERS FOR AMOUNT NECESSARY TO GET IN TITLE—EXPROPRIATION—COSTS.**

Grand Trunk R. Co. v. Donnelly, 8 O.W.N. 231.

(§ I A—4)—**VENDOR'S DUTY TO TENDER CONVEYANCE.**

In Manitoba it is the duty of the vendor to prepare and tender the conveyance.

Lobel v. Williams, 22 D.L.R. 127, 25 Man. L.R. 161, 7 W.W.R. 1042, 30 W.L.R. 352.

(§ I A—4)—**SELECTION OF NOTARY — TENDER OF DEED TO VENDOR.**

Under Quebec law it is for the purchaser of land to select a notary and to see that a deed is prepared and tendered to the seller.

Poirier v. Archambault, 23 Que. K.B. 495. [Affirmed in Lareau v. Poirier, 25 D.L.R. 266, 51 Can. S.C.R. 637.]

B. PAYMENT OF PURCHASE MONEY; DEDUCTIONS.

(§ I B—5)—**JUDGMENT DIRECTING PAYMENT — VENDOR TO ESTABLISH TITLE.**

A vendor under an agreement of sale of land is not entitled to judgment directing the purchaser to pay the purchase-money or any instalment thereof until he establishes to the satisfaction of the Court that he has a good title to the premises sold. [Cameron v. Carter, 9 O.R. 426, applied.]

Pedlar v. Ryder, 24 D.L.R. 427, 8 W.W.R. 559.

(§ I B—5)—**DEFENCES TO ACTION FOR PURCHASE MONEY—MISREPRESENTATIONS — WAIVER.**

An election to affirm the contract to buy a block of land notwithstanding alleged mis-

representations as to its suitability for building lots may be predicated from the fact that the purchaser himself subdivided the property and undertook to offer it to the public as suitable for building lots and did not advance his objection until sued for purchase money after the lapse of a year from the making of the contract.

Stewart v. Cunningham, 22 D.L.R. 845, 21 B.C.R. 255, 8 W.W.R. 579.

(§ I B—5) — **NON-REGISTRATION OF AGREEMENT—LIABILITY ON COVENANT FOR PAYMENT.**

Failure on the part of a vendor to register an agreement of sale does not debar him from recovering upon the covenants contained in such agreement. [Thompson v. McDonald, 20 B.C.R. 223, applied.]

McDonald v. McClymont, 8 W.W.R. 990.

(§ I B—5)—**DEFERRED PAYMENTS — NON-ASCERTAINMENT OF DATE.**

Under Quebec law the non-ascertainment of the date for payment of the deferred part of the purchase money upon a contract of sale of lands does not necessarily make the contract nugatory, for, in default of agreement of the parties, the Court may fix the time for payment of a debt as to which no date of payment has been fixed by the parties; failure to agree upon such a date may, in certain cases, warrant the inference that the parties have not come to a completed agreement, it being a question of construction in the particular case. [Compare Fenske v. Farbacher, 2 D.L.R. 634, as to the English law.]

Poirier v. Archambault, 23 Que. K.B. 495. [Affirmed in Lareau v. Poirier, 25 D.L.R. 266, 51 Can. S.C.R. 637.]

(§ I B—5)—**CONDITIONS AS TO PAYMENT — SUBSTITUTION.**

A stipulation in a deed of sale of an immovable subject to substitution, that a part of the price bearing interest will only be payable when the vendor has caused the substitution to disappear and the undertaking by the vendor to cause it to disappear as soon as the appelé becomes of age, does not make the sale a contract under suspensive conditions. The purchaser cannot take advantage of the above agreement in order to refuse to pay to the vendor the interest upon the price of sale.

Morin v. Lebel, 48 Que. S.C. 526.

(§ I B—5)—**AGREEMENT BY JOINT PURCHASERS OF LAND TO EACH PAY HALF PURCHASE PRICE—REFUSAL OF ONE PARTY TO PAY—REPUDIATION BY OTHER PARTY — ACTION AGAINST FIRST PARTY BY ENCUMBRANCERS—STAY OF ACTION TO PERMIT PRESENT ACTION AGAINST REPUDIATING PARTY.**

Thom v. McAra, 32 W.L.R. 869.

(§ I B—5)—**EXCHANGE OF LANDS — RETENTION OF MONEY TO PAY OFF MORTGAGES**

—RIGHT OF COVENANTOR TO BE INDEMNIFIED AGAINST OBLIGATIONS.

Campbell v. Douglas, 8 O.W.N. 501, 9 O.W.N. 148.

(§ 1B-5a)—REFUSAL TO CONTINUE PAYMENTS—MISAPPLICATION BY VENDOR AS TO PAYMENT OF TAXES—ACCELERATION CLAUSE.

By an agreement in writing the plaintiff agreed to sell and the defendant agreed to buy certain land which the plaintiff had previously agreed to sell to another person. Some payments had been made by the first purchaser, and the new agreement was made with his assent, the expressed consideration being the balance unpaid of the original purchase price. The defendant agreed to pay taxes from the date of the agreement. The purchase money was payable in small instalments, and after several instalments had been paid the plaintiff demanded from the defendant a sum for taxes which the defendant paid. Subsequently he ascertained that the taxes were due in respect of a period prior to the date of his purchase, and he demanded payment or credit, and on the plaintiff refusing either the defendant declined to pay any further instalments of purchase money, and this action was brought for the whole unpaid balance, the agreement containing the usual acceleration clause. Held, that both parties were in the wrong, the defendant clearly not being liable for the taxes in question, but that the wrongful casting of liability upon him in this respect did not justify him in refusing to make the payments in accordance with his agreement. [*Mersey Steel and Iron Co. v. Naylor*, 9 A.C. 434, applied.] Judgment was therefore given for the plaintiff for payment of the purchase money and for sale in default of payment, and for the defendant for repayment of the taxes; no order being made as to costs.

Paterson v. MacNeil, 30 W.L.R. 524.

C. DEFECTIVE OR UNMARKETABLE TITLE.

(§ 1C-10)—RIGHT TO GOOD TITLE BEFORE TAKING POSSESSION.

The purchaser is not bound to take possession until a good title has been shewn but may hold the vendor liable for his failure to take the same care that a prudent owner would take of his own property until the title has been completed. [*Foster v. Deacon*, 3 Madd. 394, and *Royal Bristol v. Bomash*, 35 Ch.D. 390, applied.]

Lobel v. Williams, 22 D.L.R. 127, 25 Man. L.R. 161, 7 W.W.R. 1042, 30 W.L.R. 352.

(§ 1C-10) — EXPROPRIATION PROCEEDING NO GROUND FOR RESCISSION.

An expropriation of a portion of land which is subject to a contract of sale is not an act of the vendor as affecting his covenant for title, and will not entitle the

purchaser to a rescission of the contract on that account. [*Reynolds v. Crawford*, 12 U. C.Q.B. 168; *Payne v. Meller*, 6 Ves. 349; *Robertson v. Skelton*, 12 Beav. 260, applied.]

Mauvais v. Tervo, 25 D.L.R. 192, 9 W.W.R. 434, 32 W.L.R. 811.

(§ 1C-10)—ACCEPTANCE AND APPROVAL OF TITLE.

In an action by vendor on a contract for sale of lands it is only where the purchaser has accepted the title or in his contract has expressly agreed to pay irrespective of the plaintiff having title, that the Court will decree payment without the plaintiff having first shewn a good title and thus satisfied the Court that he is able to deliver the property if the defendant pays the purchase money; but the vendor is entitled to a decree fixing a time within which defendant must pay under a penalty of his rights under the contract being foreclosed and judicially declared to have ceased. [*Hicks v. Laidlaw*, 2 D.L.R. 460, 22 Man. L.R. 96, applied.]

Schrader v. Manville, 21 D.L.R. 189, 8 S.L.R. 83, 7 W.W.R. 1376, 30 W.L.R. 528.

(§ 1C-10)—LAND IN OTHER PROVINCE — PROOF OF TITLE.

Where an agreement is entered into in the Province of Quebec for the purchase of land in another province and where no satisfactory proof is given of what the law is as to the requisites of good title and proper conveyance in such other province the law of Quebec will prevail.

Babineau v. Railway Centre Park Co., 23 D.L.R. 688, 47 Que. S.C. 161.

(§ 1C-10)—TENDER OF DEED.

The seller of land may, under Quebec law, take action against the purchaser to recover the price without tendering any deed, but he must shew his title and stand ready to sign a deed when the buyer presents it in proper form.

Poirier v. Archambault, 23 Que. K.B. 495. [Affirmed in *Lareau v. Poirier*, 25 D.L.R. 296, 51 Can. S.C.R. 637.]

(§ 1C-10)—TITLE PAPERS — CERTIFICATE OF SEARCH, BY WHOM MADE.

Though the seller of land may appropriately be held to exhibit his deeds and in case of a sale evidenced by deed to hand over such title papers as he actually holds and which relate solely to the land sold, he is under no obligation to have a certificate of search made by the registrar for the satisfaction of the buyer; the latter must himself have the requisite searches made at his own expense. [*Banque Ville Marie v. Millar*, 22 Que. S.C. 162, criticized.]

Poirier v. Archambault, 23 Que. K.B. 495.

[Affirmed in *Lareau v. Poirier*, 25 D.L.R. 296, 51 Can. S.C.R. 637.]

(§ IC—10)—TRANSFER FROM PERSON OTHER THAN VENDOR.

A plaintiff asking for specific performance of a contract for the sale of land cannot force upon an objecting defendant a transfer made by a person other than the one from whom he bought the land.

Gibbs v. Gibson, 9 W.W.R. 190.

(§ IC—10)—EQUITABLE INTEREST UNDER UNREGISTERED TITLE — POSSESSION.

The plaintiff being the owner of all the shares of stock of an incorporated company agreed to sell all the assets of the company to the defendant and the cash payment was made and the shares transferred. The company's title to the lands occupied by it was an unregistered one derived through two unregistered transfers in the hands of the company's solicitor at the time of the sale. The transfers could not be registered as the description referred to and depended on the location of a highway not recognized by the land titles office. In an action for the balance of the purchase price, it was held that the defendant could not resist payment on the ground of breach of a warranty that the company owned the land it occupied, as the company was equitable owner of the lands and in possession with evidence thereof sufficient under the Statute of Frauds.

Turner v. McGavin, 30 W.L.R. 505, 31 W.L.R. 465.

(§ IC—10)—INABILITY TO FURNISH TITLE.

Douglas v. Burlic, 23 D.L.R. 895, 8 W.W.R. 1038, 31 W.L.R. 677.

(§ IC—10)—SALE OF MINING CLAIMS — TERMS OF AGREEMENT—IMPERFECT TITLE — GUARANTY OF TITLE—FAILURE TO MAKE TITLE—RECOVERY OF PURCHASE-MONEY—EVIDENCE — JURISDICTION OF MINING COMMISSIONER—MINING ACT OF ONTARIO, 8 EDW. VII., CH. 21, SEC. 65—PARTIES.

Curry v. Mattair, 8 O.W.N. 148.

(§ IC—10)—AGREEMENT FOR SALE OF LAND — TITLE—APPLICATION UNDER VENDORS AND PURCHASERS ACT—PARTIES.

Re Godson and Casselman, 8 O.W.N. 480.

(§ IC—12)—POSSESSORY TITLE—WHAT IS.

A documentary title dating from a quit claim deed made in 1842, the land having been granted in 1784, without any documentary title connecting the original owner with the grantor in the deed of 1872, does not establish a possessory title within the meaning of a contract providing "a title by possession shall not be deemed a satisfactory title unless the purchaser so elects."

Floyd v. Hanson, 24 D.L.R. 320, 48 N.B.R. 339.

(§ IC—13) — COVENANT AGAINST ENCUMBRANCES.

A clause in a contract of sale, by which a

vendor declares that the lots sold are free and clear from all patent and latent servitudes, is only a formal clause which adds nothing to the legal obligations binding on the vendor.

Langlois v. Charpentier, 47 Que. S.C. 97.

(§ IC—13)—ENCUMBRANCE — AGREEMENT OF SALE—RIGHTS OF SUB-PURCHASER.

An agreement for the sale of land cannot be enforced by a vendor who himself has merely an equitable interest in the land under a contract of sale from the registered owner; nor can such interest be properly considered an encumbrance so as to entitle him to require the sub-purchaser to pay the money into Court for the purpose of discharging it; such vendor must be in a position, as a condition precedent to his right for the purchase price, to deliver of himself a valid certificate of title. [Goodchild v. Bethel, 19 D.L.R. 161; Lee v. Sheer, 19 D.L.R. 36; Robinson v. Harris, 21 O.R. 43, distinguished.]

Greene v. Appleton, 25 D.L.R. 333, 8 W.W.R. 867, 31 W.L.R. 548.

(§ IC—13)—SEWERAGE TAX AS ENCUMBRANCE — RIGHT TO DEDUCTION.

A covenant in a deed warranting the property to be free from all encumbrances and that the vendor will pay taxes, local improvements and other assessments due on the property, entitles the purchaser to an allowance of the full amount of a sewerage rate charged against the land, notwithstanding that the sewerage tax is payable in annual instalments and that all instalments were paid to date.

Munroe v. McDonald, 23 D.L.R. 105, 49 N.S.R. 110.

(§ IC—13)—SERVITUDE — RIGHT OF WAY—DUTY OF VENDOR TO DISCLOSE.

It is the duty of a vendor to make known to the purchaser the burdens and servitudes on the immovable sold and his reticence on this matter puts him in bad faith. When a vendor does not make known to his purchaser the existence of a servitude that he has himself created, he is bound by warranty against his personal act whatever may be the nature of this servitude. When a way communicating with the public road over all the length of a lot is apparent, the purchaser is justified in presuming that it was established for the benefit of the lot and not for use of the adjoining lots, even in the case where there is a fence at the end of the way on the side of the adjoining land.

Lemelin v. Demers, 47 Que. S.C. 452.

(§ IC—13)—AGREEMENT FOR SALE — INSTALMENT DUE UNDER — MORTGAGE AGAINST LAND—RIGHTS OF PARTIES.

Preston v. Adilman, 21 D.L.R. 869, 31 W.L.R. 663.

(§ IC-13)—AGREEMENT FOR SALE—INSTALMENTS—ACTION TO RECOVER — VENDOR UNABLE TO GIVE CLEAR TITLE.

Hagen v. Ferris, 21 D.L.R. 868, 8 S.L.R. 203, 8 W.W.R. 1039, 31 W.L.R. 661.

(§ IC-13)—FAILURE TO DELIVER GOOD TITLE —CAVEATS — RETURN OF MONEY PAID—ORDERS OF LOCAL MASTER.

Melfort Invest. Co. v. Mackenzie, Mann & Co., 23 D.L.R. 881, 32 W.L.R. 76.

(§ IC-13)—OBJECTION TO TITLE — REGISTRATION OF JUDGMENT—CLOUD ON TITLE —LANDS OF COMPANY IN LIQUIDATION—WINDING-UP ACT, R.S.C. 1906, CH. 144, SEC. 84.

Re Clarkson and Bastedo, 7 O.W.N. 833.

(§ IC-13)—INCUMBRANCE — ORAL AGREEMENT IN RESPECT OF—ONUS—FAILURE OF PROOF—DISCHARGE OF ENCUMBRANCE —PAYMENT OF AMOUNT TO PURCHASER—COUNTERCLAIM—SET-OFF.

Slatky v. Kaufman, 8 O.W.N. 234.

(§ IC-13a)—BUILDING RESTRICTIONS—SPECIFIC PERFORMANCE.

Failure of the vendor to specifically disclose building restrictions under the registered conveyance to him will not constitute an answer to an action for specific performance where the offer to purchase was prepared by the purchaser's agent on his own printed form containing a stipulation that the purchaser "takes the property subject to any covenants that run with the land."

Soboloff v. Reeder, 22 D.L.R. 770, 8 O.W.N. 40.

(§ IC-13a)—TITLE — OBJECTION—BUILDING RESTRICTIONS — RIGHTS OF PERSONS NOT BEFORE THE COURT—APPLICATION UNDER VENDORS AND PURCHASERS ACT.

Re Beatty and Brown, 7 O.W.N. 846.

(§ IC-16)—OUTSTANDING COAL LEASE — APPROVAL BY PURCHASER'S SOLICITOR—RIGHT OF REPUDIATION.

A purchaser is not entitled to repudiate the contract or to a return of the purchase money by reason of an outstanding lease against the coal minerals of the land, where the purchaser's agent, who acted as his solicitor, had knowledge at the time of the purchase that the vendor was not the registered owner of the minerals, and that the sale was intended as that of the surface land only.

Greig v. Franco-Canadian Mortgage Co., 23 D.L.R. 860, 9 W.W.R. 22, 32 W.L.R. 280.

(§ IC-17)—LAPSED AGREEMENT ESTABLISHING HIGHWAY OVER LAND.

An agreement stipulating the establishment of a highway across a piece of land which had been spent by lapse of time, or an action to remove such agreement as

forming a cloud upon the title, does not affect the title to the land as to entitle the purchaser to a rescission of the contract of sale where the vendor is otherwise willing and able to make a good title. [McNiven v. Pigott, 19 D.L.R. 646, 31 O.L.R. 365, reversed.]

McNiven v. Pigott, 22 D.L.R. 141, 33 O.L.R. 78, 7 O.W.N. 593.

[Varied in 22 D.L.R. 147; referred to in Hetherington v. Sinclair, 23 D.L.R. 630.]

D. DEFICIENCY IN QUANTITY.

(§ ID-20)—DEDUCTION FROM PURCHASE PRICE.

In the absence of fraud in respect of a misrepresentation as to the width of a building lot, the purchaser sued for the balance of purchase money and not claiming rescission is entitled to an abatement for deficiency in area where the frontage was in fact only 30 feet while the contract called for a frontage of 33 feet, but the purchaser who has taken possession and made improvements covering the additional three feet to which title cannot be made is not entitled to damages by reason thereof in addition to such abatement where the sale was of an entire lot bearing a descriptive number under a registered plan of sub-division and the true boundary was shewn by the registered plan and by the stakes on the ground.

Hayes v. Goddard, 22 D.L.R. 566, 31 W.L.R. 424.

(§ ID-20)—DEFICIENCY IN ACREAGE — COMPENSATION — PROVISION IN AGREEMENT FOR SALE — MISREPRESENTATION NOT AMOUNTING TO FRAUD.

Fee v. Dorr, 7 O.W.N. 680.

(§ ID-20)—MISTAKE AS TO QUANTITY OF LAND—PARTIES NOT AD IDEM—RETURN OF PURCHASE-MONEY OR SPECIFIC PERFORMANCE WITH ABATEMENT OF PRICE—ELECTION OF VENDOR—COSTS.

Allen v. Crowe, 8 O.W.N. 454.

(§ ID-22)—SALE "EN BLOC"—WHAT CONSTITUTES.

An agreement for sale describing the property as "Nos. 763-765 Mount Royal Avenue, measuring twenty-five by one hundred feet," is a sale "en bloc," and falls under art. 1503 and not art. 1501 C.C.

Friedman v. Mageau, 24 D.L.R. 224, 24 Que. K.B. 21.

E. RESCISSION OF CONTRACT.

(§ IE-25)—RIGHT TO CHATTELS UPON CANCELLATION OF AGREEMENT.

By an agreement in writing the plaintiff sold to the defendants certain lands and chattels. The defendants took possession of both, but having made default in payments

provided by the agreement, the plaintiff brought an action and obtained a decree for the foreclosure of the agreement for sale, which was afterwards made absolute, and the agreement for sale cancelled. No mention was made of the chattels in this action. The plaintiff seized one horse, and then brought this action for detinue. The defendants defended and then counter-claimed for the one horse taken. Held, that the agreement for sale was an absolute sale so far as the chattels were concerned, and that the property in the same had passed to the defendants. The agreement being cancelled, the plaintiff could not recover the price of the chattels or damages for their detention. That the defendants were entitled to recover the value of the horse seized by the plaintiff.

Churchill v. MacRae, 7 S.L.R. 190.

(§ I E—25) — MISTAKE IN QUANTITY — RIGHTS OF PARTIES.

Where the vendor of property has made an error in the description in good faith and upon discovering it offers to rescind the contract, the purchaser is not entitled to refuse this offer and ask for a reduction in the price.

Friedman v. Mageau, 24 D.L.R. 224, 24 Que. K.B. 21.

(§ I E—25) — MISREPRESENTATION.

To justify rescission of a contract for sale of land on the ground of misrepresentation there must have been a definite assertion of alleged fact as distinguished from a vague affirmation of the excellence of the property. (Per Irving, J.A.).

Stewart v. Cunningham, 22 D.L.R. 845, 21 B.C.R. 255, 8 W.W.R. 579.

(§ I E—25) — NECESSITY OF MAKING RESTITUTION.

In order to claim rescission of his agreement to purchase lands the purchaser must have a present ability to make restitution; it is not enough that he alleges he can get in the interest in them that he has sold and then make restitution in case the decree gives him that relief.

Boydell v. Haines, 21 D.L.R. 371, 21 B.C.R. 171, 8 W.W.R. 17, 30 W.L.R. 842.

(§ I E—25) — INTERESTS OF SUB-PURCHASERS — RESTITUTION — HOW AFFECTED BY OCCUPATION.

The rule as to "restitutio in integrum" is, that a person seeking relief by way of rescission cannot succeed if restitution is prevented by his own act or default; but mere occupation of the land sold, or a portion thereof, is not a bar, so long as the land has not been so wasted that the depreciation in value cannot be met by compensation, nor because of interests acquired by sub-purchasers in the absence of notice of such sub-sales to the vendor. [Rees v. De Bernardy. [1896] 2 Ch. 437. referred to.]

Plainview Farming Co. v. Transcontinental Townsite Co., 25 D.L.R. 594, 25 Man. L.R. 677, 9 W.W.R. 247, 32 W.L.R. 499.

(§ I E—25) — DELAY — KNOWLEDGE OF DEFECT.

A vendor must be in a position to make a good conveyance at the date fixed for completion; if he fails to do so, the purchaser may, on discovering the vendor's lack of title, repudiate the contract, but he must do so forthwith or with reasonable promptness; but where the purchaser knew of the defect, and thereafter himself tried to sell the land, made payments and tendered his mortgage upon it, and in all things acted as though the contract was valid, it is not open to him to repudiate on that ground alone. [Murrell v. Goodyear, 1 D. F. & J. 432; Re Bryant, 44 Ch.D. 218; Re Head's Trustees, 45 Ch.D. 310; Re Thompson, 44 Ch.D. 492, applied.]

Robinson v. Moffatt, 25 D.L.R. 462, 35 O.L.R. 9, 9 O.W.N. 209.

(§ I E—25) — SALE OF SUBDIVISION LANDS — REGISTRATION REQUIREMENT — NON-COMPLIANCE — RESCISSION.

Veilleux v. Boulevard Heights, 24 D.L.R. 881, 8 W.W.R. 440, 31 W.L.R. 10, affirming 20 D.L.R. 858, 8 A.L.R. 16.

[Affirmed in 52 Can. S.C.R. 185, 26 D.L.R.]

(§ I E—25) — TOWNSITE SUBDIVISION LOTS — VENDOR'S NON-COMPLIANCE AS TO FILING PLAN.

By sub-sec. 7 of sec. 124 of the Land Titles Act it is provided that: "No lots shall be sold under agreement for sale or otherwise according to any townsite or subdivision plan until after the same has been duly registered in the Land Titles office for the registration district in which the land shewn on said plan is situate, providing that this section shall not apply to any plan now in existence and approved by the minister." Held, that where this section is not complied with, the purchaser has a right to repudiate the contract. [Veilleux v. Boulevard Heights, 20 D.L.R. 858, 24 D.L.R. 881, 8 A.L.R. 16, followed.] Held, also, that the section covers the case of an agreement for a sale as distinguished from a completed sale, and therefore the prohibition of the statute is not avoided by registration of the plan before the transfer is made. Definition of "sold" in Municipality of Cornwallis v. C.P.R. Co., 19 Can. S.C.R. 702, and Rex v. C.P.R. Co., [1911] A.C. 328, 80 L.J.P.C. 125, held not applicable.

Abbott v. Ridgeway Park, 8 A.L.R. 314, 30 W.L.R. 667, 7 W.W.R. 1280.

(§ I E—25) — RESCISSION OF CONTRACT — WHAT CONSTITUTES — EFFECT — RIGHT TO REPAYMENT OF PURCHASE PRICE — WANT OF STIPULATION.

Saulsberry v. Ozias, 24 D.L.R. 885, 32 W.L.R. 409.

(§ I E—25)—RESCISSION OF CONTRACT—RETURN OF PURCHASE PRICE—SHARES OF STOCK AS—CREDIT FOR RENTS—INTEREST.
Lundy v. Knight, 24 D.L.R. 886, 9 W.W.R. 561, 32 W.L.R. 939.

(§ I E—25)—MENTAL INCAPACITY OF VENDOR—INTERDICTION — INSCRIPTION EN DROIT.

In an action to set aside a sale on account of the mental alienation of the vendor, subsequently interdicted, the defendant cannot attack the validity of the interdiction without bringing into the cause the person on whose petition it was granted; and an inscription en droit may properly be filed against the allegations of the declaration relating to such demand.

Charland v. Bissonnette, 47 Que. S.C. 202.

(§ I E—25)—HYPOTHEC — RADIATION—RESILIATION OF SALE.

If in certain cases a purchaser can demand that his vendor shall radiate the hypothecs which affect the property purchased he should ask for a condemnation for damages, or for resiliation of the sale, in case the vendor should fail to do what is ordered; if he does not take conclusions for that purpose, his application for radiation cannot be granted as the judgment that he would obtain could not be executed. *Nemo potest cogi ad factum.*

Dorion v. Jodoin, 47 Que. S.C. 414.

(§ I E—25) — HYPOTHEC — RADIATION — OFFER OF PAYMENT.

One who makes an offer of money to obtain the reconveyance of an immovable, should, if he is sued, deposit into Court the amount of his offer, even when the holder of the property has placed a hypothec upon it, in order to demand the radiation of the latter.

Giguère v. Colas. 48 Que. S.C. 198.

(§ I E—25)—DELAY OF VENDOR IN REMOVAL OF CAVEAT—RESCISSION.

Ballantyne v. Hettinger, 7 W.W.R. 526.
[Affirmed in 8 W.W.R. 440.]

(§ I E—26)—MISTAKE — ACQUIESCENCE BY MAKING PAYMENTS—EFFECT ON RESCISSION—RIGHTS OF JOINT PURCHASERS—PRESCRIPTION.

There is a substantial error sufficient to set aside an agreement for sale of lots when the vendor indicates to the purchaser that the lots are situated upon a street with a view of the St. Lawrence river and when other lots less advantageous situated upon another street and having no view of the river are described in the agreement for sale. The purchaser does not lose his right by acquiescence on making a payment on account without reserve, if by not making this payment he would run the risk of losing all that he had paid before, or by endeavouring to avoid a lawsuit by selling

his rights under the agreement for sale. The action of the purchaser for rescission is not the redhibitory action provided for by art. 1530 C.C., but the action to annul which, under art. 2258 C.C., is only prescribed by ten years. An agreement for sale of lots of land executed by several purchasers but not jointly, can be set aside on demand by one of them, as to him. If all the parties are not in the cause the defendant may apply to stay the action by dilatory exception until they have been summoned, but if he does not succeed he cannot prevent the judgment being pronounced upon the merits.

Montreal Invest., etc., Co. v. Sarault, 24 Que. K.B. 249.

(§ I E—26)—SALE OF LAND AND BUSINESS—MISTAKE—RESCISSION — INABILITY OF PURCHASER TO MAKE RESTITUTION — EXECUTED OR EXECUTORY CONTRACT — ABSENCE OF FRAUD — FAILURE OF CONSIDERATION.

Milk Farm Products and Supply Co. v. Buist, 8 O.W.N. 491.

(§ I E—27)—FRAUD — REMEDIES—ACTION FOR DECEIT.

Separate representations by the vendor to members of the purchasing syndicate leading to a purchase agreement by a trustee for the syndicate will not, even if false, sustain an action to rescind a later agreement between such vendor and an incorporated company to which no representations were made by the vendor on his entering into a new agreement direct with the company and accepting a surrender from the syndicate trustee, particularly where some of the syndicate members elect to stand by the purchase; the plaintiffs' remedy under such circumstances is not an action for rescission but one for damages for deceit.

Stanley v. Struthers, 22 D.L.R. 60, 7 W.W.R. 1060.

(§ I E—27)—WHEN RIGHT TO REMEDY — FAILURE OF CONSIDERATION—FRAUD.

Where an agreement of sale has been completed by conveyance, it is no longer open to the purchaser, in the absence of fraud, to complain of misrepresentation by the vendor, except in cases in which the consideration for the conveyance has totally failed. [Cole v. Pope, 29 Can. S.C.R. 291, referred to.]

Hamilton v. Margolius; Morrison v. Margolius, 22 D.L.R. 387, 391, 24 Man. L.R. 484, 489, 28 W.L.R. 504, 508.

(§ I E—27)—FALSE REPRESENTATIONS.

False representations made by a party to a contract are a cause of nullity, if they have led the other party into error as to the qualities of the subject-matter which was principally in view in making the contract, and if without them it would not have been entered into.

Le Syndicate de Rosemont v. Gagnon, 24 Que. K.B. 484.

(§ I E—27)—**MISREPRESENTATION.**

An innocent misrepresentation as to the value of land on a sale thereof is not upon the same footing as a misrepresentation as to facts which cannot be matters of opinion, as a ground for repudiating the contract in the absence of fraud.

Brauhle v. Lloyd, 21 D.L.R. 321, 8 A.L.R. 247, 7 W.W.R. 1343, 30 W.L.R. 659.

(§ I E—27)—**MISREPRESENTATION — MATERIALITY.**

In order to operate as a ground for rescission of a contract for the sale of land misrepresentation made by the vendor as to the quality of the land such as that the lots were "high and dry," must have been the inducing or effective cause of the buyer entering into the agreement of purchase. [*Sweeney v. Coote*, [1907] A.C. 221; *United Shoe Manufacturing Co. v. Brunet*, [1900] A.C. 330, referred to.]

Nelson v. Gagnon, 22 D.L.R. 179, 8 W.W.R. 907, 31 W.L.R. 346.

(§ I E—27)—**MISREPRESENTATION BY VENDOR AS TO EXTENSIONS BY MORTGAGEE.**

A purchaser of land who seeks damages from his vendor because the latter concealed from him the fact that the right to call upon the mortgagee to postpone his mortgage in favour of a new mortgage had already expired, is bound to prove that injury resulted to him from the deliberate concealment of that fact.

Bergh v. Frost, 23 D.L.R. 406.

(§ I E—27)—**FRAUD — MISREPRESENTATION AS TO ERECTION OF HOTEL IN VICINITY—RESCISSION AGAINST VENDOR'S ASSIGNEE.**

A purchaser, who is induced to purchase land by the fraudulent representations of the vendor's agent that the vendor would erect a costly hotel in the vicinity of the lot, is entitled to a rescission of the contract which remedy he may exercise against the vendor's assignee suing for the balance due on the contract, although he is not entitled to counterclaim for damage against the assignee in consequence of the fraud.

Harvey v. Lawrence, 25 D.L.R. 706, 9 W.W.R. 91, 32 W.L.R. 297.

(§ I E—27) — **FRAUD — MISREPRESENTATIONS AS TO ERECTION OF HOTEL—PURCHASER'S RIGHT OF RESCISSION — REMEDY EXERCISABLE AGAINST VENDOR'S ASSIGNEE—ESTOPPEL.**

Rolt v. Giese & Wood, 25 D.L.R. 740, 8 S.L.R. 336, 9 W.W.R. 462, 32 W.L.R. 874.

(§ I E—27)—**FRAUDULENT OPTION.**

Owners who had given an option for sale of their land at a certain price are guilty of fraud where they had replaced the option with another at a higher price for the same

period of time at the optionee's request for the latter's use in obtaining others to join him in taking up the option but with a secret agreement to give the original optionee the benefit of the difference. [*Hitchcock v. Sykes*, 13 D.L.R. 548; *Hitchcock v. Sykes*, 49 Can. S.C.R. 407, referred to.]

Schrader v. Manville, 21 D.L.R. 189, 8 S.L.R. 83, 7 W.W.R. 1376, 30 W.L.R. 528.

(§ I E—27) — **AGENT'S MISREPRESENTATIONS—AGENT ACTING FOR BOTH PARTIES.**

Misrepresentations as to the character of land made by the agent of the vendor who also acted as agent for the purchaser for the purpose of sub-dividing and reselling it, does not impute to the purchaser knowledge of the true character of the land as affecting his right of rescission of the agreement of sale.

Stewart v. Canadian Financiers, 23 D.L.R. 707, 9 W.W.R. 82, 32 W.L.R. 121.

(§ I E—27)—**FRAUD OF AGENT — AGENT BECOMING PURCHASER.**

Where the vendor's agent for sale of the property himself becomes the purchaser, with the assent of his principal, of an undivided share in the property on a joint purchase thereof and makes material misrepresentations in respect to the property to the other purchasers of shares therein which induced them to buy, rescission may be granted on the application of all the other purchasers in an action in which the vendor and his agent are parties, although the agent does not concur so far as his share is concerned; the Court has, under such circumstances, jurisdiction to restore the status quo ante fraudem. [*Braun v. Hughes*, 3 Man. L.R. 177, and *Morrison v. Earls*, 5 Ont. R. 434, distinguished.]

Kildonan Investment v. Thompson, 21 D.L.R. 181, 25 Man. L.R. 446, 7 W.W.R. 1299, 30 W.L.R. 626.

(§ I E—27)—**AGENT CO-PURCHASER — FAILURE OF VENDOR TO DISCLOSE—FRAUD.**

Where the vendor's agent for the sale of property on a commission basis had induced a third party to become his co-purchaser of the property without disclosing to him the agency and commission agreement with the vendors, it is the duty of the vendors, upon learning of the fiduciary relationship existing between their paid agent and his co-purchaser, to inform the co-purchaser of such agency agreement, and failure to do so will entitle him to rescission of the purchase agreement, and return of any purchase moneys paid thereunder.

Hitchcock v. Sykes, 23 D.L.R. 518, 49 Can. S.C.R. 403, affirming 13 D.L.R. 548, 29 O.L.R. 6.

(§ I E—27)—**FRAUD — AGENT ACTING FOR BOTH PARTIES.**

Held, upon the facts, that an agreement

for the sale of land should be declared void on the grounds that the sale had been consummated without knowledge on the part of the purchasers of the fact that their agents were also the agents of the vendors and interested in the sale to the extent of their commission.

Clark v. Hepworth, 9 W.W.R. 802.

(§ I E-27)—FRAUD AND MISREPRESENTATION—AGENT FOR BOTH PARTIES—RECKLESS STATEMENTS — SECRET COMMISSION—DECEIT—DAMAGES.

Kennedy v. Martin, 8 O.W.N. 427.

(§ I E-27)—FRAUD OF SUB-AGENT.

The fraud of a sub-agent may be ground for rescission of a contract for sale of the lands of the ultimate principal if the proved circumstances of the case are such that the ultimate principal and the intermediate agent must be deemed to have intended and agreed that the latter should or might appoint a substitute for the purpose of discharging, in his stead and on behalf of the ultimate principal, duties including or involving the making of representations of the character of that sued upon though no authority had been given to make any false representation. [De Bussche v. Alt. 8 Ch.D. 310; Powell v. Evan Jones, [1905] 1 K.B. 11, applied.]

Kildonan Investment v. Thompson, 21 D.L.R. 181, 25 Man. L.R. 446, 7 W.W.R. 1299, 30 W.L.R. 626.

(§ I E-27)—FRAUD—WAIVER.

If after discovery of the whole of the material facts giving him the right to avoid the contract, the representee has by word or act definitely elected to adhere to it, the representor has a complete defence to any proceedings for rescission.

Schrader v. Manville, 21 D.L.R. 189, 8 S.L.R. 83, 7 W.W.R. 1376, 30 W.L.R. 528.

(§ I E-27)—FRAUD—WAIVER BY PAYMENT.

The making of payments on a purchase agreement after notice of a fraud which might be set up as a ground for repudiation is evidence of an election to affirm. [Lawrence's Case, L.R. 2 Ch. App. 421, applied.]

Schrader v. Manville, 21 D.L.R. 189, 8 S.L.R. 83, 7 W.W.R. 1376, 30 W.L.R. 528.

(§ I E-27) — FRAUD AND MISREPRESENTATION—FORM OF JUDGMENT.

In an action by a vendor for purchase-money, the defendant alleged that he had been induced to buy by the fraudulent misrepresentations of the vendor and his agents, and he counterclaimed for repayment of the cash deposit, rescission of the contract, and damages. Held, upon the evidence that there had not been any misrepresentations, and that in dealing with this question, evidence of representations alleged to have been made by the vendor on the sale to other persons of adjacent similar lots, was

not admissible. The agreement contained a provision in the usual form for forfeiture of payments in the event of default and for termination of the agreement. The plaintiff's title was registered and unencumbered, and the amount due was definitely ascertained, and the defendant was in possession. Held, that the judgment should be for (a) payment to the plaintiff of the amount claimed with interest and costs; (b) foreclosure in default of payment within six months; (c) vacation of registration of the agreement; (d) forfeiture to the plaintiff of moneys paid, and (e) delivery of possession to the plaintiff. [Lee v. Sheer, 30 W.L.R. 273; Hargreaves v. Security Invest. Co., 29 W.L.R. 32, considered.]

Bauman v. Corsbie, 30 W.L.R. 510.

(§ I E-27)—TRANSFER OF LAND—FRAUD—RESCISSION — FRAUDULENT MORTGAGE—DAMAGES.

Pomeroy v. Miller, 25 D.L.R. 804, 32 W.L.R. 391.

(§ I E-27)—ACTION BY VENDOR FOR PURCHASE-MONEY—MISREPRESENTATIONS OF VENDOR—EVIDENCE — FINDINGS OF FACT OF TRIAL JUDGE—RIGHT OF PURCHASER TO RESCIND—NOTICE TO VENDOR—FINDING AGAINST ELECTION TO AFFIRM — CLAIM FOR VALUE OF CHATTELS—DEMAND FOR RETURN — COUNTERCLAIM — DAMAGES—USE AND OCCUPATION—REFERENCE—COSTS.

Wallace v. Gummerson, 8 O.W.N. 35.

(§ I E-27) — FRAUD AND MISREPRESENTATION—AGREEMENT FOR SALE OF FARM—DISMISSAL OF VENDOR'S ACTION FOR SPECIFIC PERFORMANCE — RESCISSION OF AGREEMENT.

Hopkins v. Edington, 8 O.W.N. 236.

(§ I E-27)—PURCHASE OF MINING CLAIMS — MISREPRESENTATIONS — UNDERTAKING BY ONE VENDOR TO RETURN PORTION OF PURCHASE-MONEY IN EVENT OF PROPERTIES NOT BEING AS REPRESENTED — POSITION OF CO-VENDOR — RESPONSIBILITY FOR MISREPRESENTATIONS THOUGH INNOCENT — EXECUTORY CONTRACT—RESCISSION.

Lake View Consols v. Flynn, 8 O.W.N. 333.

(§ I E-27) — FRAUD AND MISREPRESENTATION — SALE OF LAND—FRAUDULENT SCHEME—PROMISSORY NOTES—CANCELLATION.

Trepannier v. Lalonde, 8 O.W.N. 427.

(§ I E-27) — FRAUD AND MISREPRESENTATION—PROMISSORY NOTE — COUNTERCLAIM—RESCISSION—DAMAGES.

Gentles v. Georgian Bay Milling Power Co., 8 O.W.N. 618.

(§ I E—29)—INABILITY TO CONVEY—KNOWLEDGE OF PURCHASER AS DEFENCE.

A delay of more than thirteen months to furnish title to lands sold cannot be considered reasonable, and the fact that the purchaser was aware of the vendor's inability to convey until the vendor received a transfer for the land does not disclose a defence to an action for a rescission of the sale and return of the money paid thereon.

Shier v. Hackett, 23 D.L.R. 84, 31 W.L.R. 757.

(§ I E—29)—DEFECTIVE TITLE.

A subsequent purchaser is justified in demanding the annulment of a sale where the immovable is subject to a real servitude of "non-aedificandi," of which he has not been informed.

Marcel v. Legault, 23 D.L.R. 756, 24 Que. K.B. 1.

(§ I E—29)—DELAY IN MAKING TITLE — ESSENCE OF TIME.

In the absence of a stipulation making time of the essence of the contract, a delay of four months in perfecting title to land is unreasonable and will entitle the other party to repudiate the contract. [*Harris v. Robinson*, 21 Can. S.C.R. 398; *Maber v. Penskowski*, 15 Man. L.R. 236; *McDonald v. Elder*, 1 Gr. 525, referred to.]

Williams v. Black, 23 D.L.R. 287, 8 W.W.R. 1139, 31 W.L.R. 844.

(§ I E—29)—RESTITUTION TO STATUS QUO.

Where a rescission of a contract for the sale of land is sought by a purchaser upon no ground of fraud but upon the inability of the vendor to make a satisfactory title to the land conveyed, it is the duty of the purchaser to make restitution of what he had received under the contract; and where in pursuance of such contract the purchaser removes building upon the land and is unable to make complete restitution, damages equivalent to the value thereof may be allowed in restitution of the vendor to his status quo. [*McNiven v. Pigott*, 19 D.L.R. 846, 31 O.L.R. 365, reversed.]

McNiven v. Pigott, 22 D.L.R. 141, 33 O.L.R. 78, 7 O.W.N. 593.

[Varied in 22 D.L.R. 147; referred to in *Hetherington v. Sinclair*, 23 D.L.R. 630.]

II. Vendor's Lien; foreclosure.

(§ II—30)—REMEDIES OF VENDOR.

An unpaid vendor cannot have the land and the instalments of the purchase money; he must elect either remedy. [*Vancouver Land v. Pillsbury, etc. Co.*, 15 D.L.R. 775, referred to.]

Gale v. Powley, 24 D.L.R. 450, 8 W.W.R. 1312, 32 W.L.R. 65.

(§ II—30)—ACTION FOR PURCHASE MONEY—NECESSITY OF CONVEYANCE.

An open contract, or any contract under

which a purchaser is entitled to a conveyance upon payment of the purchase money, the vendor cannot maintain an action at law for the purchase price unless he has actually conveyed the land, or unless the action is for an intermediate instalment. [*Landes v. Kusch*, 24 D.L.R. 136; *Clergue v. Vivian*, 41 Can. S.C.R. 607; *East London Union v. Metropolitan R.*, L.R. 4 Ex. 309; *Laird v. Pim*, 7 M. & W. 474, applied.]

Standard Trust Co. v. Little, 24 D.L.R. 713, 8 S.L.R. 203, 8 W.W.R. 1112, 31 W.L.R. 769.

(§ II—30)—SPECIFIC PERFORMANCE — FORECLOSURE — RIGHT TO PERSONAL JUDGMENT.

The remedies of specific performance and an action for the purchase price are inconsistent, since one operates as an affirmation while the other as a rescission of the contract; and where a vendor elects to proceed with the remedy of specific performance or foreclosure of the purchaser's interest under an agreement for the sale of land, a judgment for an unpaid instalment is thereafter no longer enforceable except as to the costs. [*Lee v. Sheer*, 19 D.L.R. 36, distinguished; *Hargreaves v. Security Inv. Co.*, 19 D.L.R. 677, followed; *Jackson v. Scott*, 1 O.L.R. 488, applied.]

Standard Trust Co. v. Little, 24 D.L.R. 713, 8 S.L.R. 203, 8 W.W.R. 1112, 31 W.L.R. 769.

(§ II—30) SPECIFIC PERFORMANCE — ACTION FOR PURCHASE PRICE—PLEADING.

The remedies of specific performance of an agreement for the sale of land or an action for the purchase price thereof are both the same; but the latter carries, both as to pleadings and orders, the incidence of an action for specific performance. [*Groves v. Mason*, 2 A.L.R. 181; *Ellis v. Rogers*, 50 L.T. 660, applied; *Landes v. Kusch*, 19 D.L.R. 520, 7 S.L.R. 83, 6 W.W.R. 1309, reversed.]

Landes v. Kusch, 24 D.L.R. 136, 8 S.L.R. 32, 7 W.W.R. 1076, 30 W.L.R. 444.

[Applied in *Standard Trust Co. v. Little*, 24 D.L.R. 713, referred to in *Tucker v. Jones*, 25 D.L.R. 278.]

(§ II—30) — NECESSARY ALLEGATIONS — TITLE—POSSESSION.

In an action for the foreclosure of a contract for the purchase of land, the Court will not order the recovery of the possession of the land and the cancellation of the agreement of sale in the absence of any allegations that possession of the land was given to the purchaser, or that the agreement of sale, or the vendor's title, had been registered.

Gale v. Powley, 24 D.L.R. 450, 8 W.W.R. 1312, 32 W.L.R. 65.

(§ II-30)—ASSIGNMENT TO SEVERAL—CONTRIBUTION—SALE IN LIEU OF PARTITION.

"M" having purchased certain lands under an agreement for sale from "C," assigned the agreement to himself, his two co-plaintiffs, and the defendant, the latter three agreeing to indemnify him, each to the extent of one quarter of the purchase price, and the four also agreed to pay one "G," \$15,000 for an interest claimed by him in the said lands. The defendant made default in his contribution of part of his share and the plaintiffs had to pay his share as well as their own to "C" and "G." In an action for a declaration of a lien upon the defendant's interest in the lands for the moneys so advanced and for foreclosure. Held, that no such lien existed in favour of the plaintiffs. The plaintiffs asked leave to amend to ask for sale (in lieu of partition) with leave to all parties to bid at such sale, and for directions as to distribution of the proceeds. Held, such amendment should be granted and judgment was given for the plaintiffs for the amount advanced with an order for sale as asked on the terms set out in the judgment.

Bending v. Fitzgerald, 31 W.L.R. 507.

(§ II-31)—VENDOR'S LIEN — ACCEPTANCE OF NOTE NO WAIVER OF — PURCHASER ACTING AS AGENT FOR UNDISCLOSED PRINCIPAL — VENDOR'S RIGHT TO FILE CAVEAT UNDER LAND TITLES ACT — SUBSEQUENT REGISTRATION OF MORTGAGE — EFFECT.

Dick v. Lambert, 25 D.L.R. 730, 9 W.W.R. 905.

(§ II-32)—PURCHASER OF VENDEE — ASSUMPTION OF LIEN.

Where the purchaser of land under contract resells the same, and a sub-purchaser assumes the indebtedness to the original vendor, and agrees to indemnify the original purchaser therefrom, the latter's lien as against the sub-purchaser's interest in the land extends not only to the cash portion of the unpaid purchase money due him, but to the balance so assumed by the sub-purchaser in respect of which the original purchaser remained under obligation to the original vendor.

Ronald v. Lillard, 23 D.L.R. 392, 25 Man. L.R. 393, 7 W.W.R. 1128, 30 W.L.R. 382.

(§ II-33) — ENFORCEMENT OF VENDOR'S LIEN.

A vendor's lien upon real estate is enforceable by sale but not until it has been established by a judgment of the Court binding the persons affected by the lien; the vendor has the alternative right to rescind the contract and recover possession of the land.

Ronald v. Lillard, 23 D.L.R. 392, 25 Man. L.R. 393, 7 W.W.R. 1128, 30 W.L.R. 382.

(§ II-33)—CONCURRENT REMEDIES — FORECLOSURE — PERSONAL JUDGMENT.

A vendor suing to enforce an agreement for sale of land on the purchaser's default is not entitled to pursue concurrently the remedies of personal judgment against the purchaser and of foreclosure and sale of the lands. [Hargreaves v. Security Investment, 19 D.L.R. 677, followed.]

Boydell v. Haines, 21 D.L.R. 371, 21 B.C.R. 171, 8 W.W.R. 17, 30 W.L.R. 842.

(§ II-33) — ENFORCEMENT OF VENDOR'S LIEN — DEFICIENCY JUDGMENT — PRAYERS FOR.

Where, in an action for specific performance of an agreement for the sale of land there is no express prayer for a declaration of a lien, the prayer for an order of sale in effect entitles the vendor to a decree for a lien and sale thereunder, and to a judgment for any deficiency under the sale.

Anglo-American Trust Co. v. Longworth, 24 D.L.R. 222, 8 W.W.R. 1193, 31 W.L.R. 950.

(§ II-33)—SALE OF PROPERTY BY VENDOR—DEFAULTS BY NEW PURCHASER.

The liability for the purchase price under an agreement for the sale of mining lands, even though expressly reserved in an agreement whereby the property is subsequently sold to a new purchaser, does not continue against the original purchaser after a foreclosure by the vendor for defaults by the new purchaser. [Vivian v. Clergue, 20 D.L.R. 660, 32 O.L.R. 200, affirmed.]

Vivian v. Clergue, 24 D.L.R. 856, 51 Can. S.C.R. 627.

(§ II-33)—FORECLOSURE — LAND SITUATE OUTSIDE OF PROVINCE.

The proceedings required to be taken under the Foreclosure and Sale Act, Alta., 1914, ch. 6, for the enforcement of agreements for the sale of land do not apply where the land is situated outside of the province.

Craig v. Pegg, 25 D.L.R. 581, 31 W.L.R. 257.

[See Plainview Farming Co. v. Transcontinental Townsite Co., 25 D.L.R. 594, 25 Man. L.R. 677; Tucker v. Jones, 25 D.L.R. 278.]

(§ II-33)—DEFAULTS — CONDITIONAL RESOLUTORY CLAUSE—DEMEURE.

When in a contract a resolatory clause is conditionally stipulated for, the party who wishes to take advantage of it should prove that he has fulfilled the conditions necessary to give effect to it. The creditor of an obligation payable by periodical instalments and subject to the following conditional agreement: "Should the debtor make default in the said payments, during a period of eight weeks, the company shall be at liberty to ask for the balance then

due on purchase price," cannot demand the application of this penal clause without a prior mise en demeure. The fact that the debt will be payable at his domicile does not relieve him of the necessity of this mise en demeure.

Quebec County Realty Co. v. Teharos, 48 Que. S.C. 540.

(§ II—33)—AGREEMENT FOR SALE OF LAND—DEFAULT IN PAYMENT OF PURCHASE MONEY—FORFEITURE OF MONEYS PAID—LIQUIDATED DAMAGES—ACTUAL DAMAGE SUFFERED BY VENDOR—MORTGAGORS AND PURCHASERS RELIEF ACT, 1915, SEC. 2 (1), (e), 4 (3)—RECOVERY OF POSSESSION—COSTS.

O'Hearn v. Friedman, 9 O.W.N. 218.

III. Rights of parties as to third persons; bona fide purchaser.

(§ III—35)—WHO IS BONA FIDE PURCHASER—SALE OF LAND CONVEYED AS SECURITY.

One claiming land under an unregistered contract of sale, on which the balance of the purchase money had not been paid, is not a bona fide purchaser for value so as to be entitled to a conveyance of the land in priority to a right of redemption in one who had conveyed the land to the vendor by a deed absolute in form but intended as security for a debt. [Molony v. Kernan, 2 Dr. & War. 31, followed.]

Hetherington v. Sinclair, 23 D.L.R. 630, 34 O.L.R. 61, 8 O.W.N. 383.

(§ III—35)—EXECUTION CREDITOR.

An execution creditor is not a purchaser for value without notice as to rank in priority over a purchaser of the land, even though the purchaser registered no caveat.

Traunweiser v. Johnson, 23 D.L.R. 70, 8 W.W.R. 1028, 31 W.L.R. 712.

(§ III—35)—RIGHTS OF EXECUTION CREDITORS—PRIORITIES.

A purchaser under an instalment agreement entered into before the filing of a writ of execution against the lands of the registered vendor has a prior right to the lands as against the execution creditor.

Traunweiser v. Johnson, 23 D.L.R. 70, 8 W.W.R. 1028, 31 W.L.R. 712.

(§ III—35)—ASSIGNMENT BY VENDOR—CONDITIONS AS TO PAYMENT.

Where the payment for an assignment of an agreement for the sale of lands is made dependent upon the condition of the payment of the contract instalments, the fact that the assignee foreclosed and acquired the purchaser's interest cannot be substituted in lieu of the condition where the instalments were not in fact paid.

Meindl v. Bravender, 23 D.L.R. 108, 31 W.L.R. 924.

(§ III—35) — ASSIGNMENT OF AGREEMENT WITH VENDOR'S APPROVAL—CAVEAT BY SUBSEQUENT PURCHASER — EFFECT ON COVENANT FOR TITLE.

On February 28, 1906, plaintiff sold certain land to defendant P. By assignment dated February 13, 1907, P. assigned his interest in said contract to defendant G. which was approved by the plaintiff. On June 5, 1907, defendant B. registered a caveat against the lands, claiming under an agreement for sale from defendant P. to her. Plaintiff sued for specific performance, asking for the purchase money, and in default, cancellation of the agreement as against P. and G. No relief was asked against defendant B. Defendant G. defended, setting up that the plaintiff could not give clear title. The action being dismissed, the plaintiff appealed. On appeal:—Held, that the defendant G. was in no better position to call for clear title than the defendant P. and as P. could not compel the plaintiff to remove the caveat in question, G. could not compel its removal. That the approval of the assignment of P.'s contract to the defendant G. had not the effect of a fresh covenant on the part of the plaintiff to the defendant G. to convey the land free of all encumbrances to him.

Canadian Northern R. Co. v. Peterson, 7 S.L.R. 166.

(§ III—35)—SALE A REMERE—RESERVATION OF RIGHT TO INHABIT—SUBSEQUENT SALE—ARTS. 495 ET SEQ. 1487, 1546, 1552 C.C.

Jacques v. Normandeau, 25 D.L.R. 866, 24 Que. K.B. 377.

(§ III—38)—PURCHASE OF LANDS FROM AGENT—TRUSTS—KNOWLEDGE.

Where title to land is taken in the name of an agent, although purchased with the funds of the principal and held by the latter for a period sufficient to give him a title by possession independent of the agent's fiduciary relationship, a purchaser of the agent with knowledge of such circumstances does not stand in the position of a bona fide purchaser as to acquire a title to the land superior to the principal.

Miller v. Halifax Power Co., 24 D.L.R. 29, 48 N.S.R. 370.

VENUE.

I. IN GENERAL.

II. CHANGE.

A. In civil cases.

B. In criminal cases.

See also Removal of Causes; Courts.

I. In general.

(§ I—7) — NEGLIGENCE — DESTRUCTION OF TIMBER—PLACE OF ACTION.

An action for the negligent destruction

by a fire of the plaintiff's logs piled in readiness for transportation need not be brought in the province in which the logs were situate, but may be brought in another province in which the defendant company carries on business. [Tytler v. C.P.R. Co., 26 A.R. (Ont.), 467, followed.]

Dutton v. C.N.R. Co., 23 D.L.R. 43, 31 W.L.R. 367, 19 Can. Ry. Cas. 72.

II. Change.

(§ II A—15)—IRREGULARITY IN NAMING —
RULE 245 (b)—WAIVER — APPLICATION
TO CHANGE VENUE UNDER RULE 245 (d)
—BALANCE OF CONVENIENCE.

Hill v. Toronto R. Co., 7 O.W.N. 831.

VERDICT.

Review of, see Appeal.

In general, see Trial V.

VESSELS.

See Admiralty; Salvage; Shipping.

Collision between, see Collision; Negligence.

VIADUCT.

Construction of, see Railways; Highways.

VOTERS.

See Elections.

WAGES.

Of employees generally, see Master and Servant I.

Assignment of wages, see Assignment.

Liability of directors for, see Corporations and Companies.

Seamen's wages, see Seamen; Salvage; Admiralty.

Annotation.

Right to; earned, but not payable, when, 8 D.L.R. 382.

WAIVER.

See also Estoppel.

Of trial by jury, see Jury; Trial.

Waiver and estoppel as applied to insurance, see Insurance.

Of vendor's lien, of defects in title or fraud, see Vendor and Purchaser; Sales.

Annotation.

Waiver of forfeiture of lease: 10 D.L.R. 603.

WALL.

Party Wall, see Party Wall.

As to easements, see Easements; Lateral Support.

As boundary, see Boundary; Buildings.

WAR.

Effect on aliens, see Aliens.

Assisting alien enemies, see Treason.

Postponement of payments because war, see Moratorium.

Annotations.

Status of aliens during war: 23 D.L.R. 357.

Moratorium; Postponement of Payments Acts, their construction and application: 22 D.L.R. 865.

WARD.

See Guardian and Ward; Infants.

WAREHOUSEMEN.

I. IN GENERAL.

II. RIGHTS AND LIABILITIES GENERALLY.

Liability of carrier as, see Carriers III.

Automobile garages, see Automobiles V.

I. In general.

(See previous Annual Digests.)

II. Rights and liabilities generally.

(§ II—13)—LOSS OF GOODS — WAREHOUSE RECEIPT—LIMITATION OF LIABILITY.

The loss of goods in the hands of the warehouseman acting in violation of his contract by breaking open the original packages without authority is not subject to the conditions in limitation of liability contained in the warehouse receipt. [Harris v. G.W.R. Co., 1 Q.B.D. 534, applied.]

McGale v. Security Storage Co., 22 D.L.R. 57, 25 Man. L.R. 533, 7 W.W.R. 1015, 30 W.L.R. 349.

WARRANT.

For arrest, see Arrest; Criminal law.

Inquiry into sufficiency on application for habeas corpus, see Habeas Corpus.

Search warrants, see Search and Seizure.

WARRANTY.

As to guaranty generally, see Guaranty.

Of sale of goods, see Sale.

Of title to land, see Vendor and Purchaser.

WATER WORKS.

Operation and regulation of, see Waters; Municipal Corporations.

WATERS.

1. PUBLIC RIGHTS; RIGHTS BETWEEN PUBLIC AND INDIVIDUAL.

A. What are public or navigable.

- b. Relative rights as between Provinces or Province and Dominion.
 - c. Relative rights of public and individuals.
 - II. WATER RIGHTS AND EASEMENTS AS BETWEEN INDIVIDUALS.
 - a. Riparian or littoral rights in general; what are water courses.
 - b. Accretions; alluvion; islands; flats.
 - c. Use of water; interference with flow.
 - d. Obstructions; overflow; raising dams.
 - e. Pollution.
 - f. Prior appropriation.
 - g. Surface and seepage water.
 - h. Subterranean waters; springs; wells.
 - i. Irrigation; ditches; water rights.
 - j. Contract or grant.
 - k. Adverse use; prescription.
 - III. WATER SUPPLY.
 - a. In general; exclusive privilege.
 - b. Operation and regulation of water works.
- As to drainage, see Drains and Sewers; Municipal Corporations.
- Admiralty jurisdiction over, see Admiralty.
- As to negligence on, see Negligence; Collision.
- Right to fish, see Fisheries.
- As to shipping generally, see Shipping.
- Dominion or provincial control of harbours, see Harbours; Constitutional Law.
- Logging operations, see Logs and Logging; Timber.

Annotation.

Natural watercourse; Drainage; Cost of work; Power of referee: 21 D.L.R. 286.

I. Public rights; rights between public and individual.

B. RELATIVE RIGHTS AS BETWEEN PROVINCES OR PROVINCE AND DOMINION.

(§ IB—10)—NAVIGATION—DOMINION CONTROL—EXTENT OF.

The grant to the federal Parliament of legislative power over the subject-matter of navigation and shipping in no way implies federal ownership of the rivers, lakes, and sea-coast waters upon which ships may ply, or in regard to which there may exist rights of navigation, either on the part of the public or on the part of private owners.

Fort George Lumber Co. v. G.T.P. R. Co., 24 D.L.R. 527, 9 W.W.R. 17, 32 W.L.R. 509.

C. RELATIVE RIGHTS OF PUBLIC AND INDIVIDUALS.

(§ IC 4—47)—EXTENT OF CROWN GRANT—RAILWAY BRIDGE ACROSS RIVER.

The ownership of the Crown in the soil

and freehold of the bed of a river and of the islands therein extends usque ad coelum, and a grant by the Crown of the right to construct and maintain a railway bridge across such river carries with it the ownership of so much of the soil as is occupied by the superstructure as well as by the piers.

Re Ottawa & New York R. Co. and Tp. of Cornwall, 23 D.L.R. 610, 34 O.L.R. 55, 8 O.W.N. 369.

[Affirmed by Canada Supreme Court, February 14, 1916.]

(§ IC 5—52)—NON-TIDAL STREAM—RAILWAY BRIDGE OBSTRUCTING NAVIGATION—LIABILITY.

The Fraser River in its upper waters, although non-tidal, is a common and public highway, which the public has the right to freely use the watercourses thereof for the purpose of navigation, an obstruction of which by the erection of a bridge by a railway company will render the latter liable in damages.

Fort George Lumber Co. v. G.T.P. R. Co., 24 D.L.R. 527, 9 W.W.R. 17, 32 W.L.R. 509.

(§ IC 5—52)—NEGLIGENCE—ALLOWING BOULDER PLACED IN STREAM TO REMAIN UNMARKED WITHOUT WARNING TO NAVIGATORS—INJURY TO VESSEL—NAVIGABLE WATERS' PROTECTION ACT, R.S.C. 1906, CH. 115, SEC. 14—EVIDENCE—FINDINGS OF FACT OF TRIAL JUDGE.

Shenango Co. v. Soo Dredging Co., 8 O.W.N. 530, 9 O.W.N. 207.

(§ IC—87)—NAVIGABLE RIVERS—RIPARIAN RIGHTS—MILLOWNERS—LUMBERMEN.

The rights of lumbermen are concurrent with those of riparian owners to the use of the waters of navigable and floatable streams, for the purpose of carrying on their business, and where a dam has been constructed and used by a millowner for a number of years, and no one has ever complained of it as an obstacle to the floating of logs; the lumberman who has built other dams and increased the volume of water and the force of the current so as to enable him to carry on more extensive operations and float down larger logs, will be liable to the millowner for damages caused by these new operations.

Richardson v. Paradis, 23 D.L.R. 720, 24 Que. K.B. 16.

II. Water rights and easements as between individuals.

A. RIPARIAN OR LITTORAL RIGHTS IN GENERAL; WHAT ARE WATER COURSES.

(§ IIA—60)—NATURAL FLOW—DIVERSION—INJURY.

Every property owner is entitled to the natural flow of water through his property.

but no one is entitled by artificial means to send water forward to his neighbour to the detriment of his neighbour.

Tp. of Colchester North v. Tp. of Anderton; Tp. of Gosfield North v. Tp. of Anderton, 21 D.L.R. 277.

[Reversed in 24 D.L.R. 143, 34 O.L.R. 437.]

(§ II A—60)—ERECTION OF PIER NOT INTERFERING WITH ACCESS TO LAND.

No right of action accrues to one riparian proprietor against another for the latter's erection and maintenance of a pier in the navigable waters of a lake where the plaintiff's right of access to his lands is not interfered with and he suffers no damages of a special character in addition to the interference with the public right of navigation, notwithstanding that the pier was not erected in compliance with the lawful requirements and is maintained contrary to law. [*Volcanic Gas Co. v. Chaplin*, 19 D.L.R. 442, 31 O.L.R. 364, referred to.]

Baldwin v. Chaplin, 21 D.L.R. 846, 34 O.L.R. 1, 7 O.W.N. 637, 8 O.W.N. 349.

C. USE OF WATER; INTERFERENCE WITH FLOW.

(§ II C—84)—DRAINAGE — DEFECTIVE CULVERT—LIABILITY FOR FLOODING.

The construction of a culvert by a power company in a negligent manner, whereby it interferes with the flow of a natural watercourse, giving rise to the flooding of the abutting lands, will render the company liable for damages occasioned thereby. [*L'Esperance v. G.W. R. Co.*, 14 U.C.Q.B. 173, distinguished.]

McCrimmon v. B.C. Electric R. Co., 24 D.L.R. 368, 8 W.W.R. 1289, 32 W.L.R. 81, affirming 20 D.L.R. 834, 7 W.W.R. 137.

(§ II C—87)—DAMS — INTERFERENCE WITH LOGGING OPERATIONS — PREFERENTIAL RIGHTS—STATUTORY LICENSEES.

The defendants, who had acquired timber rights from the Crown by the purchase of limits in an unsurveyed territory owned by the Crown, in which were found the western sources of the Thessalon river, a floatable stream, began operations in 1913, and constructed a series of dams upon that river—essential for taking away the timber. The plaintiffs had no particular status on the river, but, during the season of 1914, were driving logs down it from a tributary of the river which joined it below the confluence of its two branches, and about 15 miles below the defendants' operations on the western branch of the river. The plaintiffs complained that the defendants had deprived them of water sufficient for the purpose of floating their logs in the river:—Held, that as to the floatation of logs in the river, the plaintiffs and defendants had equal rights under the Rivers and Streams Act, R.S.O. 1914, ch. 130, sec. 3. Origin and

history of the legislation, and consideration of the meaning of the word "freshet." [*Caldwell v. McLaren*, 9 App. Cas. 392, 406, referred to.] But as to the user of the water above where the defendants had made improvements, they had preferential rights as statutory licensees. The statutory license, implemented by the erection of works, gave them, by necessary implication, superior rights in regard to the use and control of these improvements, as between them and the plaintiffs operating below. There had been no diversion or diminution of the water, no interference with the natural, ordinary flow of the stream; and the rightful retention of the water by the defendants could not be turned into an illegal detention from the plaintiffs.

Hunt v. Beck, 34 O.L.R. 609, 9 O.W.N. 187, reversing *Hunt v. Beck*, 22 D.L.R. 913.

D. OBSTRUCTIONS; OVERFLOW; RAISING DAMS.

(§ II D—95)—OVERFLOW OF RIVER — OBSTRUCTION BY WATER POWER COMPANY—DAMS AND BOOMS—ICE JAMS—SCOPE OF CORPORATE POWERS—LIABILITY FOR NEGLIGENCE.

Riverside Lumber Co. v. Calgary Water Power Co., 25 D.L.R. 818, 9 W.W.R. 471, 32 W.L.R. 858.

E. POLLUTION.

(§ II E—100)—RIPARIAN RIGHTS.

A riparian owner has the right to the full flow of the water in its natural state, without diminution or pollution.

Nipisiquit Real Estate, etc., Co. v. Can. Iron Corp., 42 N.B.R. 387.

F. PRIOR APPROPRIATION.

(§ II F—105)—IRRIGATION RIGHTS—PRIORITIES.

A pre-emptor having as such acquired a water record for a specific purpose, namely, the irrigation of certain lands, cannot apply that record to after-acquired lands without a new application and record, and any other person acquiring a record in the interim would have priority of rights as against user on the after-acquired lands. (Per Gallihier, J.A.)

Morens v. Board of Investigation, 22 D.L.R. 419, 31 W.L.R. 468.

I. IRRIGATION; DITCHES; WATER RIGHTS.

(§ II I—155)—RIGHTS OF LUMBERMEN FLOATING LOGS IN RIVER—INJURY TO DAM.

Lowery & Goring v. Booth, 24 D.L.R. 865, 34 O.L.R. 204, 8 O.W.N. 529.

(§ II I—156)—EXTENT OF USE — PRESCRIPTIVE RIGHTS—PRE-EMPTION.

The prescriptive right which, under the Water Act Amendment Act, 1913, B.C., ch.

82, sec. 13, may accrue from the actual enjoyment without interruption for the full period of 20 years for "some other purpose" than that for which a water record existed but for which water might have been recorded, cannot be set up so as to support a claim for use of the water on other premises than that in respect of which it was recorded by the pre-emptor of lands; the "other purpose" in that statute has reference to the various purposes for which a water record might be granted, ex gr., for irrigation or for mining, in respect of the same lands.

Morens v. Board of Investigation, 22 D.L.R. 419, 31 W.L.R. 468.

K. ADVERSE USE; PRESCRIPTION.

(§ II K-166) -- UNNAVIGABLE STREAM -- RIPARIAN RIGHTS--ACCESS -- TITLE BY POSSESSION--LIMITATION.

Twin City Ice Co. v. City of Ottawa, 24 D.L.R. 873, 34 O.L.R. 358, 8 O.W.N. 607.

III. Water supply.

(See previous Annual Digests.)

WAY.

Private way generally, see Easements.
As street or highway, see Highways.

WEEDS.

Assessments under Weeds Act, see Taxes.

(§ I-2)--CONSTRUCTION OF NOXIOUS WEEDS ACT--POWERS OF INSPECTOR--NOTICE.

The Noxious Weeds Act should be construed strictly, and ambiguous expressions in the taxing clauses thereof should be construed in favour of the subject. An inspector of weeds has no power under sec. 6 of the Noxious Weeds Act to fix the date by which the summer fallowing directed by him is to be done. A notice, not in writing, but intended to be given under sec. 6 of the Act, if acted upon estops the Weed Inspector from acting under the provisions of sec. 8.

Re Rur. Mun. of Fertile Belt, 9 W.W.R. 103, 32 W.L.R. 267.

WILLS.

I. THE INSTRUMENT; FORM; REQUISITES; VALIDITY.

- A. In general.
- B. Execution; attestation.
- C. Revocation; reviving.
- D. Who may make; capacity; undue influence.
- DD. What may be disposed of.
- E. Probate; contest; foreign wills.
- F. Codicil.

II. NUNCUPATIVE; HOLOGRAPHIC.

III. DEVISE AND LEGACY.

- A. Construction generally; implied gift.
- B. Description of beneficiaries; who may take.
- C. Children not mentioned or disinherited.
- D. Restrictions on charitable bequest or devise.
- E. What property passes.
- F. Partial intestacy.
- G. Nature of estate or interest created.
- H. Enjoyment; payment.
- I. Election; acceptance.
- J. Equitable conversion.
- K. Charge upon donee or land devised.
- L. Lapsing; ademption; deduction; revocation. renunciation.
- M. Division of residue; inconsistent clauses.

IV. SUIT TO CONSTRUCT OR REFORM.

Powers and duties of executors, see Executors and Administrators.

Tax on succession, see Taxes V.

Inheritance rights, see Descent and Distribution.

Presumptions as to intestacy, see Evidence II.M.

Law of place governing, see Conflict of Laws.

Costs in will cases, see Costs.

Annotations.

Ambiguous or inaccurate description of beneficiary: 8 D.L.R. 96.

Substitutional legacies; variation of original distributive scheme by codicil: 1 D.L.R. 472.

Effect of war on appointment of executors or administrators for benefit of alien enemies: 23 D.L.R. 375, 380.

I. The instrument; form; requisites; validity.

A. IN GENERAL.

(§ I A 2-10)--TESTAMENTARY CAPACITY -- DELUSIONS--EXECUTION BY MARE.

Momborg v. Jones, 25 D.L.R. 766, 9 W.W.R. 246, 32 W.L.R. 513.

[See also 21 D.L.R. 863, 25 Man. L.R. 504.]

B. EXECUTION; ATTESTATION.

(§ I B-20)--FORM OF WILL--QUEBEC.

In Quebec, a will made according to the form derived from the law of England, as to execution and attestation, is void.

Vondette v. Vondette, 47 Que. S.C. 534.

(§ I B-20)--PROOF OF DUE EXECUTION -- JUDGMENT OF SUBROGATE COURT--APPEAL--NEW TRIAL--RIGHT OF APPEAL--VALUE OF PROPERTY AFFECTED--APPOINT-

MENT OF ADMINISTRATOR WITH WILL ANNEXED—COSTS.

Egan v. McArthur, 9 O.W.N. 253.

C. REVOCATION; REVIVING.

(§ I C—32) — ATTEMPTED REVOCATION — CROSSING OUT SIGNATURE — NAME LEGIBLE.

Running a pen through the signature of a will by a testator, but leaving his name plainly legible, with a writing below "I hereby revoke this will" subscribed with the testator's initials, dated, and attested by his wife in his presence, does not constitute an effectual revocation of the will under secs. 22 and 23 of the Wills Act, R. S.O. 1897, ch. 128, and will not affect the title to land by the admittance of such will to probate. [Re Goods of Godfrey, 69 L.T.R. 22, followed; Re John Drury's Will, 22 N.B.R. 318; Re Goods of Morton, 12 P.D. 141, referred to.]

Re Mulholland & Van den Berg, 24 D.L.R. 785. 34 O.L.R. 242, 8 O.W.N. 573.

E. PROBATE; CONTEST; FOREIGN WILLS.

(§ I E 1—40)—FOREIGN WILL — PROBATE — VALIDITY.

A will executed in Quebec before a notary and filed with him as a notarial instrument under Quebec law may be proved on the trial of an action in New Brunswick as to real estate there by a copy produced on the evidence taken in Quebec under commission and certified by the commissioner from the original produced by the notary as a witness before him and by evidence of its attestation in conformity with the New Brunswick law; it is not essential that the will should have theretofore been proved in solemn form in New Brunswick. [Property Act (ch. 152. C.S.N.B.) sec. 58, considered.]

Sweeney v. De Grace, 21 D.L.R. 626.

(§ I E 1—40)—ADMISSION TO PROBATE—SUBSEQUENT DISCOVERY OF PRETENDED CODICILS—REJECTION BY EXECUTORS AS NOT GENUINE—DUTY OF EXECUTORS.

Re Bilton, 8 O.W.N. 553, 9 O.W.N. 104.

(§ I E 1—40)—PROOF IN SOLEMN FORM — DUE EXECUTION—TESTAMENTARY CAPACITY—COSTS.

Lamphier v. Brown, 9 O.W.N. 200.

(§ I E 1—42)—CONTEST BY LEGATEE WHO ACCEPTED UNDER WILL—INSUFFICIENT EXECUTION.

A special legatee, who, after the death of the de cuius, accepted without reserve his legacy, does not, on account of a partial execution of the will, lose his right to invoke the nullity of the legacy made to his co-legatee.

Vondette v. Vondette, 47 Que. S.C. 534.

(§ I E 2—45)—PHYSICIAN DRAWING WILL ON DAY OF DEATH—OBVIOUS HURRY—ERROR IN NAME OF BENEFICIARY — LARGE AMOUNT—STRICT INVESTIGATION.

Re Jones, 21 D.L.R. 863, 25 Man. L.R. 504, 31 W.L.R. 663, 8 W.W.R. 1059.

[See also 25 D.L.R. 766.]

F. CODICIL.

(§ I F—60)—LIMITATION AS AFFECTING PREVIOUS TERMS OF WILL—TIME OF VESTING.

A will providing the equal division of an estate amongst the children of the testator upon the death or re-marriage of the widow, in the event of their attainment of a certain age, modified by a codicil that the real property shall not be divided among the beneficiaries until after ten years from the death of the testator, has the effect of suspending the conversion of the real estate for purposes of distribution, upon their attainment of that age, for the period mentioned in the codicil, unless it be to prevent loss by depreciation or to pay incumbrances or debts.

Re Singer, 22 D.L.R. 717, 33 O.L.R. 602, 8 O.W.N. 336.

[Affirmed in 52 Can. S.C.R.]

II. Nuncupative; holographic.

(§ II—65) — REVOCATION BY MARRIAGE—CHANGE OF DOMICILE.

A holograph will executed in the Province of Quebec becomes revoked as regards its effect in Ontario by the testator's marriage in Ontario after changing his domicile to that province.

Seifert v. Seifert, 23 D.L.R. 440, 32 O.L.R. 433, 7 O.W.N. 440.

[See also Davies v. Davies, 24 D.L.R. 737.]

III. Devise and legacy.

A. CONSTRUCTION GENERALLY; IMPLIED GIFT.

(§ III A—75)—GIFT OF WHOLE ESTATE TO WIFE SUBJECT TO THREE GIFTS FOLLOWING IT—LEGACIES PAYABLE OUT OF REAL ESTATE AFTER WIFE'S DEATH—GIFT OF PERSONAL ESTATE UNEXPENDED AT WIFE'S DEATH TO CHARITIES—REFERENCE TO ASCERTAIN AMOUNT "UNEXPENDED"—JUDGMENT FOR ADMINISTRATION OF ESTATE—RIGHTS OF HEIRS AT LAW AFTER PAYMENT OF LEGACIES.

British and Foreign Bible Society v. Shapton, 7 O.W.N. 658.

B. DESCRIPTION OF BENEFICIARIES; WHO MAY TAKE.

(§ III B—80)—DIVISION OF ESTATE AMONG NAMED BROTHERS AND SISTERS BY ONE BROTHER "ACCORDING TO HIS BEST JUDGMENT"—TRUST—IMPERATIVE DIRECTION—DISCRETION—LIMITED POWER — DIVISION BASED UPON EQUALITY—EXERCISE

OF JUDGMENT AS TO ATTAINING EQUALITY
—TENANCY IN COMMON — ONE SISTER
NAMED IN WILL PREDECEASING TESTATOR
—INTESTACY AS TO HER SHARE—ASCER-
TAINMENT OF NEXT OF KIN OF TESTATOR
AT HIS DEATH—SISTER SURVIVING TESTA-
TOR BUT DYING BEFORE DIVISION—VESTED
SHARE PASSING TO REPRESENTATIVES.

Re Hislop, 7 O.W.N. 614.

(§ III B—80)—TRUST “WHATEVER BELONGS
TO ME”—INCLUSION OF REALTY—AVOID-
ANCE OF INTESTACY—DEVISE TO WIFE
“FOR HER OWN USE AND FOR THE BRING-
ING UP OF MY CHILDREN”—DISCRETION
OF WIFE—INTEREST OF CHILDREN.

Re Culbert, 9 O.W.N. 312.

(§ III B—80)—LEGACY TO DAUGHTER—SET-
TLEMENT IN TRUST.

Re Dixon, 8 O.W.N. 294, 405.

(§ III B—81)—“INTEREST OF STOCK” SUED
AS MEANING SHARES IN COMPANY —
“ANY MALE HEIRS”—EQUALLY DIVIDED
BETWEEN—PERSON IN EXISTENCE AND
UNASCERTAINED CLASS OF PERSONS —
VESTED INTEREST—COSTS.

Re Challoner, 7 O.W.N. 742.

(§ III B—81)—DEVISE — “HEIRS” — ES-
TATE TAIL—VENDOR AND PURCHASER.

Re Finlay and Darling, 8 O.W.N. 193.

(§ III B—83)—CHILDREN—STEP-CHILDREN.

Special circumstances must be shewn to
warrant the inclusion of a stepchild of a
deceased sister of the testator in distribut-
ing a bequest made in terms to the children
of such deceased sister.

Re Morrow, 22 D.L.R. 592, 8 O.W.N. 246.

(§ III B—83)—GRANDCHILDREN.

The interpretation of the word “children”
in a bequest can only be altered from its
proper meaning so as to include grand-
children if on a proper construction of the
will it is found to have been intended to
bear the larger signification. [Re Kirk,
Nicholson v. Kirk, 52 L.T. 346, followed.]

Re Morrow, 22 D.L.R. 592, 8 O.W.N. 246.

(§ III B—83)—DEVISE TO CHILDREN ON RE-
MARRIAGE OF WIDOW—ONE CHILD SUB-
SCRIBING WILL AS WITNESS—WILLS ACT,
R.S.O. 1914, CH. 120, SEC. 17—DEVISE TO
CLASS—FAILURE OF GIFT TO ONE OF
CLASS—PARTITION AMONG REMAINING
CHILDREN—COSTS—ALLOWANCE FOR RE-
DUCTION OF MORTGAGE BY WIDOW BE-
FORE REMARRIAGE.

Depatie v. Bedard, 8 O.W.N. 423.

(§ III B—83) — PARTNERSHIP BETWEEN
FATHER AND SON—BEQUEST BY FATHER
TO SON OF HALF SHARE IN PROPERTY OF
PARTNERSHIP AND DIVISION OF REMAIN-
ING HALF AMONG ALL CHILDREN EQUALLY

—EFFECT OF — ELECTION—LIABILITY
TO ACCOUNT.

Re Wallace, 7 O.W.N. 683.

(§ III B—83)—ADOPTED CHILDREN — DIVI-
SION OF ESTATE AFTER DEATH OF WIDOW
“BETWEEN” ADOPTED DAUGHTER AND
CHILDREN OF TWO SISTERS — ADOPTED
DAUGHTER ENTITLED TO ONE HALF —
CHILDREN OF SISTERS TO SHARE REMAIN-
ING HALF PER CAPITA — PERIOD OF
VESTING — ABSENCE OF RESIDUARY
CLAUSE — ADOPTED DAUGHTER DYING
AFTER TESTATOR BUT BEFORE WIDOW—
AVOIDANCE OF LAPSE—CHILDREN TAK-
ING SHARE OF PARENT.

Re Puley, 8 O.W.N. 42, 306.

(§ III B—84)—BEQUEST TO NEPHEWS AND
NIECES LIVING AT DECEASE OF TESTA-
TOR — EXCLUSION OF CHILDREN OF
NEPHEWS.

Re Morton, 8 O.W.N. 521.

D. CHARITABLE BEQUEST OR DEVISE; RESTRICTIONS.

(§ III D—100)—VAGUENESS.

The following clause in a will: “I will
and order that on death of my daughter, the
property hereby given in usufruct be dis-
tributed among works of charity by my
executor above named at his discretion,” is
void as being vague, uncertain and contain-
ing no indication of a beneficiary to whom
the property should be given, and who
could demand the carrying out of the pro-
visions of this clause.

Cinq-Mars v. Atkinson, 24 Que. K.B. 534.

E. WHAT PROPERTY PASSES.

(§ III E—105)—TRUST FOR INVESTMENT —
“INTEREST-BEARING SECURITIES” — COM-
PANY-SHARES — MORTGAGES — INTER-
EST OF INCOME.

Re Abbott, 8 O.W.N. 662.

(§ III E—105)—RIGHT OF TWO BENEFICI-
ARIES TO OCCUPY DWELLING-HOUSE —
PRIVILEGES — MONEY PAYMENT IN LIEU
OF — FORFEITURE — ABANDONMENT —
DEATH OF ONE BENEFICIARY — “CON-
TINUES TO DWELL”—JUDGMENT IN AC-
TION — ORIGINATING NOTICE — RULES
600, 604, 605—SCOPE OF—COSTS.

Re Murray, 9 O.W.N. 223.

(§ III E—111)—RESIDUARY BEQUEST — IN-
COME OR CORPUS—“THE SAME”—“BLOOD
RELATIVES”—NEXT OF KIN.

Re Murray, 8 O.W.N. 463.

(§ III E—111)—DEVISES TO SONS—MISDE-
SCRIPTION OF LANDS—GENERAL INTEN-
TION — FALSA DEMONSTRATIO—LANDS
ACTUALLY OWNED BY TESTATOR PASSING
TO DEVISEES—RESIDUARY CLAUSE — AN

NUTTY TO WIDOW—CHARGE ON LANDS DEVISED—REQUESTS IN LIEU OF DOWER.
 Re Devins, 8 O.W.N. 540.

F. PARTIAL INTESTACY.

(§ III F—115) — **LIFE ESTATE — LIMITATION AS TO REMAINDER.**

A devise of land to the sons of a testator for life and upon their marriage to their surviving wives and children, with a recital in the habendum of another devise in the same will naming the sons only "to have and to hold to them as aforesaid mentioned," creates a life estate for the sons only, and intestacy as to the remainder.

Stuart v. Taylor, 22 D.L.R. 282, 33 O.L.R. 20, 7 O.W.N. 551.

G. NATURE OF ESTATE OR INTEREST CREATED.

(§ III G 1—120)—**DEVISE TO WIFE FOR LIFE WITH REMAINDER TO SON — LEGACIES CHARGED ON LAND—WHEN PAYABLE.**
 Re McClean, 7 O.W.N. 696.

(§ III G 1—120)—**BEQUEST OF MORTGAGE TO DAUGHTER "FOR HER SOLE USE DURING HER LIFETIME" — BEQUEST TO OTHERS AFTER HER DECEASE—RIGHT OF DAUGHTER TO EXPEND CORPUS AS WELL AS INTEREST—PARTIES—COSTS.**
 Matte v. Matte, 8 O.W.N. 605.

(§ III G 1—120) — **BEQUEST OF PERSONAL PROPERTY—ABSOLUTE USE DURING LIFETIME OF LEGATEE—DISPOSITION OF REMAINDER (IF ANY)—"ISSUE."**
 Re McLaughlin, 8 O.W.N. 277.

(§ III G 1—120)—**DEVISE TO GRANDCHILDREN —ABSOLUTE ESTATE IN FEE—SALE OF LAND BY ORDER OF COURT—DIVISION OF PROCEEDS—INFANTS' SHARES — MAINTENANCE.**
 Re Moisse, 9 O.W.N. 67.

(§ III G 2—125)—**DEVISE — LIFE ESTATE WITH POWER OF SALE AND RIGHT TO ENCROACH UPON CORPUS — VENDOR AND PURCHASER—RIGHT OF LIFE-TENANT TO CONVEY.**
 Re Gouinlock, 8 O.W.N. 561.

(§ III G 2—125)—**DEVISE — GIFT OVER — REPUGNANCY—ESTATE IN FEE SIMPLE.**
 Re Cathcart, 8 O.W.N. 672.

(§ III G 2—126)—**LIFE ESTATE — DISCRETION AS TO DISPOSITION OF REMAINDER—CHILDREN "OR OTHERWISE."**

A devise by a testator of all his estate to his daughters nominatim, to hold for themselves and to make such disposition thereof from time to time among his children "or otherwise" as the daughters may decide, creates a life estate with a general power of appointment as to the residue which might be exercised by the appointment to themselves—the words "or other-

wise" referring to the time of disposition as well as to the objects of the gift.

Meagher v. Meagher, 22 D.L.R. 733, 34 O.L.R. 33, 8 O.W.N. 357.

(§ III G 3—131)—**ESTATE FOR LIFE OR ESTATE TAIL—RULE IN SHELLEY'S CASE—"ISSUE."**

Re Russell, 8 O.W.N. 248.

(§ III G 3—131)—**DEVISE "ISSUE" — "IN FEE"—LIFE ESTATE — REMAINDER — RULE IN SHELLEY'S CASE.**

Re Taylor, 9 O.W.N. 271.

(§ III G 4—135)—**ESTATE UPON CONDITION—"ALL LIVING CHILDREN"—DEPENDENT ON RECOVERY OF HEALTH—PROVISIONS FOR WIDOW.**

Re Curtis, 24 D.L.R. 914.

(§ III G 4—135)—**BEQUEST — CONDITION—"IF LIVING"—TIME APPOINTED FOR PAYMENT.**

Re Jackson, 9 O.W.N. 29.

(§ III G 4—138) — **DEVISE OF FARM TO DAUGHTERS — PROVISION IN EVENT OF MARRIAGE — RESTRAINT OF MARRIAGE—DEVISE IN FEE SUBJECT TO CONDITIONS SUBSEQUENT — TRUSTEES — POWER TO SELL AND CONVEY LAND.**

Re McBain, 8 O.W.N. 330.

(§ III G 4—138)—**BEQUEST OF SHARE OF ESTATE TO WIDOW ABSOLUTELY AND FURTHER SHARE IF SHE SHOULD REMAIN UNMARRIED — CONVERSION OF ESTATE INTO MONEY AND INVESTMENT IN ONTARIO—PAYMENT OF SMALLER SHARE TO WIDOW—FURTHER SHARE RETAINED BY EXECUTORS AND INCOME PAID TO WIDOW—REMOVAL OF WIDOW FROM ONTARIO—CORPUS TO REMAIN IN ONTARIO.**

Re Fischer, 9 O.W.N. 68.

(§ III G 4—139a) — **INEFFECTIVE DEVISE — MISTAKE IN DESCRIPTION OF LAND—RESIDUARY DEVISEE — PARTIAL RESTRAINT ON ALIENATION — VALIDITY—TITLE — CONVEYANCE—NEXT OF KIN—PERIOD OF ASCERTAINMENT.**

Re Oliver, 9 O.W.N. 190.

(§ III G 5—140)—**DEVISE — LIFE ESTATE — REMAINDER — BROTHERS AND SISTERS LIVING AT DEATH OF TESTATOR—BROTHERS AND SISTERS BORN AFTERWARDS.**

Re Van Every, 9 O.W.N. 69.

(§ III G 6—145)—**EXECUTORY DEVISE—LIMITATION OVER IF AGE NOT ATTAINED—ABSOLUTE ESTATE.**

Upon a devise of land in trust for a grandchild until he attains the age of twenty-six, followed by a gift over to persons who are to share in the residue in the event that he does not live to that age, there is an implication, that the devisee, on attaining the stated age, should become en-

titled to the whole interest in the property absolutely. [Corpton v. Davis, L.R. 4 C.P. 159; Wilkes v. Williams, 2 J. & H. 125, followed.]

Re Cotter, 24 D.L.R. 289, 34 O.L.R. 24, 8 O.W.N. 354.

(§ III G 7—150) — MAINTENANCE OF CHILDREN — DISCRETION AS TO—EFFECT OF CHILD'S MARRIAGE.

A clause in a will directing the payment to a widow the net income of an estate for the maintenance of herself and the children of the testator during her widowhood, vests the discretion in her, if exercised in good faith, as to the manner and extent to which provision should be made to each child, and does not obligate her to take into consideration the need of support of children who had become forisfamiliarated or had married.

Re Singer, 22 D.L.R. 717, 33 O.L.R. 602, 8 O.W.N. 336.

[Affirmed in 52 Can. S.C.R.]

(§ III G 7—150)—ANNUITIES—"NET INCOME OR PROCEEDS"—RIGHT TO RESORT TO CORPUS.

A bequest of annuities out of "the net income or proceeds" of property directed to be converted into money, renders the corpus subject to the payment of the annuities, if the income therefrom is insufficient to pay them, since the word "proceeds" includes corpus unless it is clear that a more restricted meaning is intended.

Beal v. Eastern Trust Co., 43 N.B.R. 23.

(§ III G 7—150)—"PROCEEDS OF THE SAID PROPERTY" — RENTS OR PROFITS FROM WORKING FARM — MAINTENANCE OF INFANT DEVISEE—SALE OF FARM—EXECUTORS—GUARDIAN.

Re Wemp, 9 O.W.N. 34.

(§ III G 8—157)—ANNUITIES — JOINT ESTATE — SURVIVORSHIP.

On a bequest directing the payment of an annuity during the joint life of the legatees and upon the death of either or the last survivor, the like sums to be paid to the children of a certain legatee, the legacy will not cease or revert to the residue upon the death of either of the children, but will go to the survivor of them for life. [Grant v. Winbolt, 23 L.J. Ch. 282, distinguished.]

Re Mott; Payzant v. Forrest, 24 D.L.R. 150, 49 N.S.R. 78.

(§ III G 9—160)—VESTED INTEREST — ENJOYMENT POSTPONED PENDING AUTHORITY TO SELL.

A clause in a will provided that the residue of the testator's property "be sold at such a time and in such manner as may seem to my trustees best for my estate, it being left to their absolute discretion at what time and on what terms they shall

sell any of my said property, and on realizing the same or any portion thereof to divide the proceeds among my wife and . . . children." The widow died before any of the residue of the property had been sold:—Held, that the share of the widow was vested, although the enjoyment was postponed, the postponement being for the benefit of the estate. [Packham v. Gregory, 4 Hare 396, followed.]

Re Ward, 33 O.L.R. 262, 8 O.W.N. 76, 520.

(§ III G 9—160) — DIVISION OF ESTATE AMONG CHILDREN—SHARE OF ABSENTEE — PRESUMPTION OF DEATH INTESTATE—VESTED INTEREST.

Re Sanderson, 9 O.W.N. 204.

H. ENJOYMENT; PAYMENT.

(§ III H—170)—PAYMENT OF QUARTER OF ANNUAL INCOME OF ESTATE TO WIDOW QUARTERLY—MEANING OF "QUARTERLY." Re Short, 8 O.W.N. 190.

(§ III H—170) — ANNUITIES — PAYMENT OUT OF INCOME OR CAPITAL—ACCUMULATED SURPLUS INCOME — PRIORITIES. Re Mackay, 8 O.W.N. 263.

(§ III H—170)—BEQUESTS TO INDIVIDUALS — SUCCESSION DUTY TO BE PAID BY "ESTATE"—INSUFFICIENCY OF ESTATE—BEQUEST OF RENTALS OF REAL ESTATE—PAYMENT OF DEBTS, TESTAMENTARY EXPENSES, AND COSTS OF ADMINISTRATION — CHARGE ON REALTY AND PERSONALTY PRO BATA—PAYMENT OF SUCCESSION DUTY BY LEGATEE.

Re Bilton, 8 O.W.N. 323.

(§ III H—170)—PROVISION FOR SON IN CASE OF NEED—APPLICATION FOR PAYMENT OF ALLOWANCE—JURISDICTION OF COURT—RULES 600-607—ORDER DIRECTING INQUIRY INTO CIRCUMSTANCES OF APPLICANT.

Re O'Meara, 8 O.W.N. 441.

(§ III H—170)—LEGACY — POSTPONEMENT OF PAYMENT — ACCUMULATIONS OF INCOME.

Re Smith, 8 O.W.N. 543.

(§ III H—170)—UNDISPOSED OF PERSONALTY — INSUFFICIENCY TO PAY DEBTS AND MORTGAGE CHARGES — DEFICIENCY BORNE BY MORTGAGED LAND — WILLS ACT, R.S.O. 1914, CH. 120, SEC. 38—INTEREST PAYABLE OUT OF REVENUE FROM MORTGAGED LAND — PERIOD OF DISTRIBUTION—EXPIRATION OF LIFE-TENANCY — PERSONS ENTITLED TO SHARE — ASCERTAINMENT — VESTED ESTATE—SURVIVORSHIP—REMUNERATION OF EXECUTORS—DIVISION BETWEEN CORPUS AND INCOME—COSTS OUT OF CORPUS.

Re Le Brun, 9 O.W.N. 309.

(§ III H—171)—DIRECTION TO EXECUTORS TO SELL FARM AND DIVIDE PROCEEDS—SALE OF FARM BY TESTATOR AFTER EXECUTION OF WILL—EFFECT OF CODICIL—MORTGAGE STANDING IN PLACE OF FARM—ACQUISITION OF OTHER REAL ESTATE NOT MENTIONED IN WILL—INTESTACY.
Re Graham, 8 O.W.N. 497.

K. CHARGE UPON DONEE OR LAND DEVISED.

(§ III K—187)—SPECIFIC REQUEST OF CHATTEL—DIRECTION BY CODICIL THAT CHATTEL BE BURIED WITH TESTATRIX—INVALIDITY—PECUNIARY LEGACIES—FAILURE OF ASSETS—ADMINISTRATION OF ESTATE—PAYMENT OF DEBTS—LEGACIES CHARGED ON REALTY—PRIMARY RESORT TO RESIDUE OF PERSONALTY—COSTS.
Re Durrell, 9 O.W.N. 11.

L. LAPSING; ADEMPMENT; DEDUCTION; REVOCATION; RENUNCIATION.

(§ III L—191) — TRUSTS — LAPSING — DEATH OF TRUSTEE—CLASS BENEFICIARIES—GRANDCHILDREN.

The death of a trustee named in a will before the testatrix has the effect, if the trustee is not of a class with the other beneficiaries, of lapsing the gift to the trustee's share in the estate, but will not affect residuary interests of grandchildren intended by the terms of the trust, and in carrying out its object, the Court will divide the subject of the gift equally between the grandchildren.

Re Cotter, 24 D.L.R. 289, 34 O.L.R. 24, 8 O.W.N. 354.

(§ III L—191)—LAPSED LEGACIES — PREDECEASE OF LEGATEES—RESIDUARY CLAUSE—TRUST—WILLS ACT, SEC. 37.
Re Stewart, 8 O.W.N. 16.

(§ III L—191)—LEGACIES — INSUFFICIENCY OF PERSONAL ESTATE TO PAY—DIRECTION THAT REAL ESTATE NOT TO BE ENCROACHED UPON—PROPORTIONATE ABATEMENT OF PECUNIARY LEGACIES — UNNECESSARY MOTION—COSTS.

Re Robins, 8 O.W.N. 18.

(§ III L—196)—GENERAL OR SPECIFIC LEGACIES—ABATEMENT—DIRECTION TO SOLICITOR TO DELIVER CHATTELS—DONATIO MORTIS CAUSA.

By his will the testator directed that the whole of his assets be converted into money and the proceeds distributed in pecuniary legacies. These legacies were made subject to a proviso for abatement. One of the legacies was to M. Subsequently, he executed a codicil containing the following clause: "I wish to leave to M. all my interest in the mortgage on . . . (certain lands). None of the principal of said mortgage had been paid at this date." Held, that the legacy of the mortgage was a specific legacy,

the mortgage was withdrawn from the effect of the clause in the will directing all the assets to be converted into money, and that the legacy was in substitution of that given by the will and not subject to the proviso in the will for abatement. [Burrroughs v. Cottrell, 3 Sim. 375; Scott v. John, 4 O.R. 457, followed.] Held, that on the fact the provisions for abatement set out in the will did not apply. The deceased left a letter directed to his solicitor, asking that certain chattels be given to the parties designated and that a cheque he had drawn be given to the payee. Held, that these dispositions could only be supported as donatio mortis causa, and as there was neither actual nor constructive delivery, they must fail.

Re H. Aldridge, 32 W.L.R. 748.

IV. Suit to construe or reform.

(§ IV—200)—SUMMARY APPLICATION—PARTIES—HEIRS AT LAW AND NEXT OF KIN.
Re Page, 9 O.W.N. 280.

WINDING-UP.

Of company, see Corporations and Companies VI.

Dissolution of partnership, see Partnership.

Insolvency in general, see Insolvency; Assignment for Creditors.

WITNESSES.

I. COMPETENCY.

- A. In general.
- B. Husband or wife.
- C. Effect of death.

II. EXAMINATION.

- A. In general.
- B. Cross-examination.
- C. Privilege.

III. IMPEACHING; DISCREDITING; CORROBORATING.

IV. CREDIBILITY.

V. FEES.

As to attestation, see Deeds; Wills.

Depositions of, see Depositions.

Opinions and conclusions of, see Evidence.

Practice in discovery, see Discovery and Inspection.

Annotation.

Competency of wife in crime committed by husband against her; criminal non-support; Cr. Code, sec. 242a: 17 D.L.R. 721.

I. Competency.

A. IN GENERAL.

(§ I A—2)—TESTIMONY OF PURCHASER AS TO VALUE OF SHIPMENT LOST BY CARRIER. In an action against the defendant com-

pany to recover the value of two black fox pups and one cross pup, part of a lot of nine shipped at Dryden in Ontario, to be delivered to the plaintiffs at Sackville, N.B. on the ground that the three foxes died of suffocation on the journey through the negligence of the employees of the defendant company. Held, that a part owner who had purchased the foxes and who stated in his evidence that there were several fox ranches where he lived, that he knew the market value of foxes from what people said and from what he had read, and that he had been engaged in the fox business to a considerable extent since making the purchase, was a competent witness to prove their value.

Trenholm v. Dominion Express, 43 N.B. R. 98.

(§ I A—8a) — COMPETENCY NOTWITHSTANDING DEATH SENTENCE.

A person under sentence of death is competent as a witness on the trial of another for a criminal offence. [*R. v. Hach*, 16 Can. Cr. Cas. 196, followed; *R. v. Webb*, 11 Cox C.C. 133, distinguished.] Sec. 1064 of the Criminal Code giving special directions for the safe custody of a convict sentenced to death does not interfere with the powers conferred by sec. 977 upon Courts of criminal jurisdiction to order the convict to be produced as a witness on the trial of an indictable offence.

Rex v. Kuzin, 21 D.L.R. 378, 24 Can. Cr. Cas. 66, 25 Man. L.R. 218, 8 W.W.R. 166, 30 W.L.R. 803.

(§ I A—9) — PERSONS JOINTLY CHARGED — ACCOMPLICES.

Where two persons were jointly charged with theft and one pleaded guilty and the other not guilty, the former may be called as a witness against the latter although sentence had not yet been passed upon the plea of guilt; in such a matter it must be left to the discretion of the presiding Judge to decide what is the fairest and most convenient course to pursue in the particular case, and whether there should be an adjournment of the trial or an immediate sentence of the accomplice; and where he is holding the trial without a jury, it is not error for the Judge to take cognizance of the accomplice's evidence before sentencing him, although in receiving the testimony the Judge expressed a view favouring a different course had there been a jury. [*Winsor v. The Queen*, L.R. 1 Q.B. 390, and *R. v. Payne*, L.R. 1 C.C.R. 349, discussed.]

Rex v. McClain, 23 D.L.R. 312, 23 Can. Cr. Cas. 488, 8 A.L.R. 73, 7 W.W.R. 1134, 30 W.L.R. 388.

II. Examination.

C. PRIVILEGE.

(§ II C—45) — CRIMINATING EVIDENCE—GOVERNMENTAL INVESTIGATION.

The powers conferred on an Investigation Commission to compel the attendance of witnesses and production of documents for the purpose of enabling the government to proceed in civil and criminal prosecutions, is no abridgment of the immunity of giving criminating evidence recognized by the Dominion and Provincial Evidence Acts.

Kelly & Sons v. Mathers, C.J.K.B., 23 D. L.R. 225, 25 Man. L.R. 560, 8 W.W.R. 1208, 31 W.L.R. 931, 32 W.L.R. 33.

III. Impeaching; discrediting; corroborating.

(§ III—53) — CONTRADICTION BY WRITTEN STATEMENT—LETTER.

A proposal to contradict a witness by means of a letter previously written by him was properly rejected where the witness' attention had not been directed to those parts of the letter which were to be used for the purpose of contradicting.

Robinson v. Haley, 42 N.B.R. 657.

(§ III—57) — ADVERSE WITNESS.

It is ground for ordering a new trial that evidence of a statement made by a Crown witness to the police, and taken down in writing on their inquiry into the crime, was improperly admitted for the Crown on the witness' failure to identify at the trial as belonging to the accused certain clothing which in his statement to the police he had identified as such, when there had been no finding by the trial Judge, under sec. 9 of the Canada Evidence Act, that the witness was adverse, and that such statement was read by the Crown counsel to the jury and referred to by the trial Judge as being in evidence, although the latter, in his charge, advised the jury not to base a finding on the statement so admitted. [*Allen v. The King*, 18 Can. Cr. Cas. 1, 44 Can. S.C.R. 331, and *Ibrahim v. The King*, [1914] A.C. 616, 63 L.J.P.C. 185, applied; *Greenough v. Eccles*, 5 C.B.N.S. 786; *R. v. William Smith*, 2 Cr. App. R. 86 and 106; *Price v. Manning*, 42 Ch.D. 372, 58 L.J. Ch. 649; *R. v. Mulvihill*, 18 D.L.R. 189, 22 Can. Cr. Cas. 354, 19 B. C.R. 197; *Rice v. Howard*, 16 Q.B.D. 681, 55 L.J.Q.B. 311, referred to.]

Rex v. May, 21 D.L.R. 728, 23 Can. Cr. Cas. 469, 21 B.C.R. 23, 7 W.W.R. 1261, 30 W.L.R. 488.

(§ III—58) — CORROBORATIVE TESTIMONY — RELEVANCY.

Facts which tend to render more probable the truth of a witness' testimony on any material point are admissible in corroboration thereof although otherwise irrelevant

to the issue, and although happening before the date of the fact to be corroborated. [*Wilcox v. Gottfrey*, 26 L.T.N.S. 481. applied.]

Rex v. Rabinovitch, 21 D.L.R. 600, 23 Can. Cr. Cas. 496, 25 Man. L.R. 341, 30 W.L.R. 609.

(§ III—58) — CORROBORATION—ORAL TESTIMONY.

The "evidence" of the claimant which requires corroboration under sec. 12 of the Alberta Evidence Act, 1910, 2nd session, ch. 3, in order to recover against the estate of a deceased person means the oral testimony of the claimant.

Brocklebank v. Barter, 22 D.L.R. 209, 8 A.L.R. 262, 30 W.L.R. 159.

IV. Credibility.

V. Fees.

(See previous Annual Digests.)

WOMEN.

As affected by marriage, see Husband and Wife.

Widows' Relief Acts, see Descent and Distribution.

Right to practise law, see Solicitors.

WOODMEN'S LIENS.

See Logs and Logging; Timber.

Liens in general, see Liens.

WORDS AND PHRASES.

"Abandonment"	474
"Action"	574, 596
"Altering"	260
"Animals at large"	582
"Animus dedicandi"	225
"Any male heirs"	723
"Application for compensation"	461
"Apprenticeship"	38
"Architect"	45
"Assisting"	14, 673
"Assumption of mortgage part of consideration"	276
"At factory cost"	140
"At owner's risk"	99
"Available"	357
"Baggage"	96
"Bank"	73
"Bankable paper"	74
"Bank, loan company, etc."	660
"Between"	724
"Book debts"	174
"Boycotting"	520
"Breed of foxes"	605
"By the assured"	358
"Capital of the rents"	456
"Carrying on business or in operation"	158
"Cash surrender value"	357
"Caveat emptor"	606
"Charge in writing"	203
"Chose juree"	614

"Civil rights in the Province"	126
"Client of, etc."	136
"Commons"	227
"Completion"	660
"Concerts"	636
"Conclusive evidence of incorporation"	615
"Considerable merit"	462
"Construction or operation"	428
"Continues to dwell"	724
"Contract"	480
"Contract of municipal corporation"	499, 500
"Creditor"	117, 158
"Cut rate store"	673
"Daily attendance"	546
"De bene esse"	231
"Debt owing or accruing"	194
"Debts"	174
"Definite period"	657
"Definite shape"	138
"Délit"	163
"De medietate lingue"	396
"De plano"	22
"Direct taxation within the Province"	127
"Dispute"	644
"Due and payable"	408
"During life, widowhood"	557
"En bloc"	698
"Entire beneficial interest"	50
"Estate"	728
"Exchange of lands and one dollar"	276
"Exclusive grant"	501
"Ex debito justitiæ"	178
"Existing"	357
"Express"	98
"Extension"	535
"Factory"	223, 458
"Fair actual value"	559
"False statement annuls the policy"	358
"Filed"	395
"Final in its nature"	21
"Financial institution"	660
"Flasher"	603
"Forming part of railway"	656
"Free and clear of all debts"	297
"Free from incumbrances"	198
"Freight"	98
"Freshet"	718
"Frontage approximately 73 feet"	631
"Full answer and defence"	130
"Good roads"	103
"Goods and chattels of mortgagor or his assigns"	486
"Goods, wares and merchandise"	114, 612
"Governed"	110
"Harsh and unconscionable transaction"	489
"High and dry"	703
"High grade seal"	605
"Highway crossing"	580
"I agree to pay on old bill"	431
"Immediate benefit"	238
"Immediate delivery followed by change of possession"	80
"Improperly withhold"	368
"In accordance with law"	249
"In any provincial Act"	652
"Indebtedness and sum of"	413
"Indictment"	201, 638

"Injuring liability".....	504	"Property".....	127
"Instrument".....	480	"Prosecutor".....	440
"Interest".....	293	"Prospectus, statement or account"....	297
"Interest chargeable after 30 days"...	370	"Provincial objects".....	158
"Interest of stock".....	723	"Public use of invention".....	541
"Issue".....	725, 726	"Public work".....	196
"Judgment".....	473	"Quarterly".....	728
"Just and reasonable".....	359	"Question of law".....	22
"Just as if you had incorporated".....	314	"Ratione materiæ".....	36
"Juris et de jure".....	226	"Realize the lien".....	473
"Justly owing".....	468	"Receiver".....	588
"Keeping company with".....	346	"Registered".....	333
"Kept and stored".....	359	"Renewable".....	74
"Knowingly".....	377	"Renewal".....	82
"Lay and bonus wages".....	616	"Report".....	649
"Leaving the property".....	153	"Request".....	466
"Legally compelled".....	544	"Request of owner".....	472
"Lien Holder".....	464	"Required".....	544
"Link and pin coupling".....	581	"Rescission".....	609
"Liquidated damages".....	309	"Res ipsa loquitur".....	304
"Listing".....	86	"Respondent superior".....	46, 503
"Loan of \$1,200 on promissory note"...	114	"Right".....	262
"Lot or portion of land".....	657	"Right of way clearing".....	276
"Mail and express".....	98	"Safety island".....	513
"May".....	368	"Saisie-conservatoire".....	236
"Mechanical processes".....	546	"Sale".....	379, 498
"Meetings".....	524	"Sale en bloc".....	698
"Merely interlocutory".....	21	"Salvage or towage".....	613
"Moral and physical degeneracy".....	421	"Same".....	724
"More or less".....	97, 140, 265	"Sell".....	379
"My debt".....	431	"Shall not exceed the sum".....	456
"Necessaries".....	330	"Sits".....	656
"Necessary for purposes of justice"...	231	"Sleighs and other vehicles".....	496
"Net profits".....	444	"Sold".....	700
"Not under crop".....	654	"Sole use during lifetime".....	725
"Oath".....	12, 522	"Sound health".....	360
"Occupant".....	655, 657	"Special circumstances".....	28
"Officer".....	239	"Specialty debts".....	665
"Oil and its products".....	535	"Statement of accused".....	201
"On, in or about".....	458	"Statement of claim delivered".....	548
"Operation of railway".....	428	"Statu quo".....	610
"Other or another line".....	666	"Strictissimi juris".....	315
"Other persons".....	231	"Subjects".....	618
"Other purpose".....	719	"Sub judice inter partes".....	193
"Other similar shows".....	636	"Substantial wrong or miscarriage"...	398
"Otherwise".....	725	"Substantive right in controversy"....	18
"Outlet liability".....	504	"Sum of \$1,500 now paid".....	115
"Out of and in the course of employ- ment".....	457	"Summary trials".....	203
"Overhead charges".....	140	"Surrender value in cash".....	357
"Owner".....	244, 466, 470	"Sworn".....	12
"Owner of certain breed of foxes"....	136	"Threshing memorandum".....	70
"Partnership".....	534	"Title".....	263
"Party adverse in interest".....	238	"To be divided".....	190
"Passing off".....	156	"Tracks".....	640
"Perfect health".....	360	"Trail".....	495
"Person".....	652	"Transcribe".....	649
"Person aggrieved".....	22, 26	"Unjustly made to suffer".....	464
"Person or lot".....	658	"Unoccupied".....	654
"Plant".....	458	"Unreasonably interfere with construc- tion and operation".....	126
"Possessory title".....	695	"Upon the merits".....	38
"Prejudiced".....	464	"Unexpended".....	722
"Previous chaste character".....	619	"Until put or worked into building"...	471
"Proceeds".....	727	"Use of the corporation".....	500
"Proceedings on such appeals".....	110	"Use of other part of lot".....	228
"Proceeds of property of absconding debtor".....	288	"Utilities".....	601
"Proces-verbal".....	251	"Value received".....	70
		"Wages".....	468

"Whatever belongs to me".....	723
"Wing wall".....	322
"Without prejudice to dispute jurisdiction"	300
"Works for general advantage of Canada"	574
"Works and utilities".....	501

WORK AND LABOUR.

Contracts of service generally, see Master and Servant.

Interpretation of contracts to perform work, see Contracts.

Wrongful interference with contracts, see Contracts VIII; Conspiracy.

Workmen's Compensation, see Master and Servant V.

Annotation.

Quebec law on workmen's compensation: 7 D.L.R. 5.

WORKMEN'S COMPENSATION.

See Master and Servant.

WRIT AND PROCESS.

I. IN GENERAL.

II. SERVICE.

- A. In general; on non-resident.
- B. On corporations.
- C. By publication; substantial service.
- D. Privilege; exemption.
- E. Liability for serving.

III. RETURN; PROOF; SETTING ASIDE WRIT OR SERVICE.

Various writs and orders. see Attachment; Certiorari; Execution; Garnishment; Injunction; Mandamus; Prohibition; Quo Warranto.

Appearance to writ, see Appearance.

I. In general.

(§ I—2)—OMITTING ADDRESS — VALIDITY.

The omission in the writ of summons of the address of a defendant company is fatal, and the writ will be set aside.

Brown v. North American Lumber Co., 21 B.C.R. 253.

(§ I—2)—WRIT OF SUMMONS—IRREGULARITY —SPECIAL ENDORSEMENT — RULE 33.

Watson v. Morgan, 9 O.W.N. 281.

(§ I—8)—RENEWAL OF WRIT — ELECTION ACT.

As the Controverted Municipal Elections Act, R.S.N.S. 1900, ch. 72, sec. 8, provides for service of the petition in the same manner as a writ in a civil case, substituted service may be authorized in like manner, on proof of inability to effect personal service, although the five days allowed for service had not expired, nor had an application been made to extend the time. [Peter-

borough West Election Case (Stratton v. Burnham), 41 Can. S.C.R. 410, followed.]

McLellan v. McIsaac, 21 D.L.R. 429, 48 N.S.R. 299.

(§ I—8)—STATEMENT OF CLAIM—RENEWAL.

A statement of claim cannot be renewed after the expiration of six months from its date of issue.

Crown Lumber Co. v. Malcolm, 9 W.W.R. 481.

II. Service.

A. IN GENERAL; ON NON-RESIDENT.

(§ II A—10)—OF PETITION TO ANNUL DECREE.

The delay for service of a petition to annul a decree is the same as in all other proceedings which commence by way of petition and is one clear day.

James Bay & E.R. Co. v. Bernard, 23 D. L.R. 701, 24 Que. K.B. 6.

(§ II A—10)—OF STATEMENT OF CLAIM — SEVERAL DEFENDANTS—ATTACHING MEMORANDA OF INFORMATION.

The proper course for a plaintiff to pursue who desires to use one original statement of claim for service on a number of defendants whose times for appearance may be different is to endorse upon the statement of claim only the memoranda which are uniform for all, and to use an attached notice where there is any variation in the information to be given to different defendants. If this is done, there is no necessity for a concurrent writ.

London Scottish Can. Inv. Syndicate v. Davidson, 9 W.W.R. 731.

(§ II A—16)—OF STATEMENT OF CLAIM — PARTIES OUTSIDE OF JURISDICTION — LEAVE.

Where the defendants without the jurisdiction are necessary or proper parties under clause (G) of r. 204, the plaintiff should issue a statement of claim, serve the defendants without the jurisdiction (see clause (G)), then apply for leave to serve the defendants without the jurisdiction and, having obtained an order, issue a concurrent statement of claim or claims on which the time for defence, or demand of notice as shewn by the endorsements thereon, is that prescribed in the order, and serve the defendants out of the jurisdiction. In the case of a sole defendant or all the defendants residing out of the jurisdiction a statement of claim should be issued and an order then obtained for leave to serve the defendant or defendants out of the jurisdiction and fixing the time for defence or demand of notice, and after obtaining the order, the time for defence or demand of notice and the date of the order should be inserted in the endorsement thereon. In a

case in which there is a defendant residing north of the 55th parallel of north latitude and a defendant residing south thereof, the times for defence or demand of notice as fixed by the rule differing, a concurrent statement of claim should be issued.

Parker v. Holloway, 9 W.W.R. 286.

(§ II A-16)—SERVICE OUT OF JURISDICTION —RENEWAL—NEW AVERMENTS.

If a material representation upon which the leave to serve out of the jurisdiction was obtained in the first instance turns out to be unfounded, the plaintiff ought not to be allowed, when an application was made by the defendant to discharge the order for the issue of the writ and service, to set up another and a distinct cause of action which was not before the Judge upon the original application. [*Parker v. Schuller*, 17 T.L.R. 299, referred to.]

Boyd v. Dean, 22 D.L.R. 676, 7 W.W.R. 1307, reversing 7 W.W.R. 1208.

(§ II A-16)—SERVIS EX JURIS—INSUFFICIENT AFFIDAVIT—SETTING ASIDE.

In an action by a liquidator of a company, which is being wound up, sec. 22 of the Winding-up Act does not prevent a defendant from moving to set aside a concurrent writ of summons and the service thereof. [*Mersey Steel & Iron Co. v. Naylor*, 9 Q.B.D. 648, applied.] The affidavit filed in support of an application for a concurrent writ of summons for service out of the jurisdiction must shew a good cause of action, otherwise the order may be set aside, [*Dickson v. Law*, [1895], 2 Ch. 65; *Fowler v. Barstowe*, 20 Ch.D. 240, and *Shore v. Hewson*, 1 S.L.R. 74, followed.]

Frid Lewis v. Holmes, 31 W.L.R. 918, 8 W.W.R. 1195, 8 S.L.R. 182.

(§ II A-19)—SUBSTITUTED SERVICE OF WRIT OF SUMMONS — SERVICE BY MAILING — SERVICE EFFECTIVE FROM DATE OF MAILING—JUDGMENT — REGULARITY—MORTGAGE ACTION — STAY OF PROCEEDINGS UNDER MORTGAGORS AND PURCHASERS RELIEF ACT, 1915—CONDITION OF PAYMENT OF NOMINAL SUM FOR COSTS.

Creasor v. Bonstelle, 8 O.W.N. 558.

D. PRIVILEGE; EXEMPTION.

(§ IID 2-45)—SOLDIERS — STATUTORY PRELIMINARIES — AFFIDAVIT — ACTIONS IN REM.

Sec. 144 of the Imperial Army Act 1881,

ch. 58, as applied to Canada by the Militia Act, ch. 41, R.S.C., sec. 74, which provides that no process may issue against a soldier without the preliminary filing of an affidavit under sub-sec. 4, applies only to proceedings taken against the person of the soldier, but not to an action for the foreclosure of an agreement for the purchase of lands, in which case it may be done by a notice in writing.

Gale v. Powley, 24 D.L.R. 450, 8 W.W.R. 1312, 32 W.L.R. 65.

(§ IID 2-49) — SUSPENSION OF ACTIONS AGAINST LIQUOR LICENSEES BECAUSE WAR—SETTING ASIDE SERVICE.

A proclamation during a state of war, prohibiting the taking of any action against liquor licensees during the proclaimed period, does not deprive creditors from issuing the writ; but service of the writ, if arising out of an action in connection with the business as liquor licensees, will be set aside and the action continued to all other claims.

Imperial Elevator & Lumber Co. v. Kuss, 25 D.L.R. 55, 8 S.L.R. 360, 9 W.W.R. 606, 32 W.L.R. 941, varying 9 W.W.R. 164, 32 W.L.R. 378.

[Followed in *Miller v. Kuss*, 25 D.L.R. 816.]

(§ IID 2-49)—SETTING ASIDE SERVICE — ACTIONS AGAINST LIQUOR LICENSEES—SUSPENSION BECAUSE WAR.

Miller v. Kuss, 25 D.L.R. 816, 9 W.W.R. 763, 32 W.L.R. 957.

[See *Imperial Elevator v. Kuss*, 25 D.L.R. 55.]

III. Return; proof; setting aside writ or service.

(§ III-55)—CROWN PRACTICE—RETURN OF SUMMONS — MOTION TO QUASH.

Where r. 37 of the Crown Office Rules is adopted, then, on return of the summons, counsel may move to quash on the return without further order and no recognizance may be entered into, r. 36 not applying.

Rex v. Dhana Singh, 7 W.W.R. 1101, 25 Can. Cr. Cas.

Standard Law Library



3 6105 062 507 723

